

**PROPOSED ROTHER VALLEY RAILWAY (BODIAM TO ROBERTSBRIDGE
JUNCTION) ORDER**

TRANSPORT AND WORKS ACT 1992

Ref: DPI/U1430 /18/21 (TWA/18/APP/02)

OBJ/1002/AH/2

PROOF OF EVIDENCE: APPENDICES

**ANDREW HIGHWOOD LLM FRICS FAAV
ON BEHALF OF THE HOAD FAMILY OF PARSONAGE FARM
AND THE TRUSTEES AND EXECUTORS OF
THE NOEL DE QUINCEY ESTATE AND MRS EMMA AINSLIE OF MOAT FARM**

Savills (UK) Limited

33 Margaret Street

London W1G 0JD

Tel: (0) 20 7409 8075

email: ahighwood@savills.com



APPENDIX 1

Qualifications

Andrew Highwood

LLM FRICS FAAV



Director

Development–
Compulsory Purchase

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KEY CLIENTS

- Bryan Cave Leighton Paisner
- BDB Pitmans
- CMS
- Osborne Clarke
- Payne Hicks Beach
- Richard Max & Co
- RPC Law
- Womble Bond Dickinson

Andrew specialises in planning and compulsory purchase. He is a member of the Agricultural Law Association, the Compulsory Purchase Association and he is a member of Council for the National Infrastructure Planning Association. Andrew is immediate past Chairman of the RICS CPO Panel. He often produces reports as an expert witness.

Andrew is frequently instructed to deal with property matters where there is a dispute without a simple outcome. This requires attention to detail and a forensic approach.

RECENT PROJECTS

- Expert valuation report in relation to flooding and the effect on market value.
- Successful use of mediation to settle several contentious cases
- Land assembly for an Entertainment resort classified as a Nationally Significant Infrastructure Project
- Valuation of property for a wide range of mainstream and specialist institutions
- Acquisition of land for urban regeneration purposes
- A re-design of road and rail proposals at Reading Station to avoid destroying the site of the Reading Festival
- Valuation and CPO advice relating to proposals for a second runway at Gatwick and previously at Stansted and a third runway at Heathrow
Strategic advice for tax planning purposes
- Expert valuation report in relation to contamination and the effect on market value.

CAREER HISTORY

Andrew joined Savills in 2002 and with his specialism in compulsory purchase he is consulted by colleagues within Savills throughout the country.

APPENDIX 2

A selection of documents inspected at
the National Archives

16th October, 1967.

Thank you for your letter of 4th October, 1967 which enclosed a memorandum from one of your constituents about my recent decision not to grant a Light Railway Order for the line between Robertsbridge and Tenterden.

Fundamentally the reasons for my decision not to make the Order were twofold: I was not convinced beyond reasonable doubt that the Light Railway Company would be sufficiently profitable to be able to sustain in perpetuity the heavy statutory obligations in respect of bridging and drainage which attach to the line; and I was not convinced that the local transport need which the Railway Company proposes to meet is of an order which would justify reviving level crossings over several important major roads. It is for the Minister, in the light of all the information available, to decide where the balance of public interest lies, and I do assure you that the final decision was taken only after the most thorough examination of the facts, not only by officials, but in turn by the Joint Parliamentary Secretary, by the Minister of State and finally by me.

I should like now to deal in detail with the points raised in the Railways Company's press release which seem to be threefold:-

- (1) It adduces "new evidence" about the Company's financial support, and about the road traffic on the A.21.
- (11) My decision was based largely upon the probability that dual carriageway bridges, at a cost to the taxpayer of several hundred thousand pounds, might become necessary if the level crossings were re-opened. The Company complains that this factor was not raised at the public inquiry, and not put to the promoters.

/(111)

- (111) I did not discuss with the promoters alternative forms of order incorporating restrictions either on the duration of the Order or on the timing of the trains.

In our view neither of the items of new evidence now brought forward by the Company is sufficient to alter the balance of public interest on which I made my decision, even if it were now legally possible to reconsider the application.

It would clearly not be possible to regard the personal financial resources of a single supporter however generous as overcoming the considerable doubts which emerged during the inquiry about the financial resources of the Company, and their likely ability to build up adequate reserves not only in the short term but in perpetuity. Protective clauses sought by the drainage authorities would of course be valueless if the Company went into liquidation.

As far as the problem of level crossings is concerned I cannot accept that the A.21 census figures now produced by the Company, but not submitted before, alter the basic issues. In the letter to the Company announcing the decision the summer peak flow on the A.21 was given as over 13,000 vehicles a day. The Company's figure for the busiest week-ends of the year is "barely 12,200 vehicles", surely not a radically different order of magnitude. Moreover there are six other level crossings to be considered including one on the A.229 and two on the A.28. The Company is quite wrong in its contention that the possibility of dual carriageway bridging was not mentioned at the public inquiry. The spokesman for Kent County Council said that by 1981 there might be 700 vehicles an hour at times on the A.28, that dual carriageways might then be necessary, and that in this case a bridge would have to be built. Although the possibility of bridges on the A.21 and A.229 was not specifically mentioned at the inquiry, the figures quoted in the inspector's report make it clear that those two roads are even busier than the A.28.

It is true that we did not discuss with the promoters the possibility of some kind of restricted order. The idea of an order for an experimental period of years, although at first sight attractive, is in the view of my legal advisers doubtfully acceptable. Moreover the serious question will arise of the obligations in respect of drainage and bridging at the end of the period. These could clearly not be transferred back to the Railway Board, and it would quite inequitable for the landowners and drainage authorities to be deprived of their legal rights.

Certainly an order could have been made allowing trains to run only on limited days of the week, but so as to avoid delays to large and evergrowing week-end road traffic to the coast it would have been necessary to restrict the railways almost entirely to weekday working. This would surely have reduced the

/potential

potential revenues of the Company, which on their own evidence would only just be sufficient, even without such restrictions, to cover the very considerable operating costs of the line.

In this context the Company suggest that weekday working would "enable the weekday local passenger and freight services to be run to the maximum of advantage of local users"; but the detailed figures of estimated revenue produced by the promoters after the inquiry showed that two-thirds of the railway business would be excursion traffic, while only a tenth would be non-excursion passenger traffic and the remaining 20-25 percent will be freight.

These estimates in our view show that essentially this would be an entertainment railway rather than a necessary rail service. Indeed the fact that British Railways withdrew their passenger services as long ago as 1954, long before the Beeching report, throws strong doubt on the extent of local demand and the likely viability of the Company.

Of course I have every sympathy for light railways, whether or not their function is unashamedly non-utilitarian, but one cannot share the Company's view that the interests of such a railway, however loyally and enthusiastically supported, must be allowed to prevail against other major public interests.

The Company refers to the inspector's view expressed in the last paragraph of his report. To quote more fully than they do, this reads: "There is a public demand slenderly amounting to evidence of a public need, but of a strength which could not prevail against serious objections on wider public grounds to the railway being re-opened". I doubt whether many disinterested people would share the Company's view that no such serious objections exist.

When I was advised to make this decision, I knew of course that the applicants would be deeply disappointed, and would probably react accordingly.

It is important to remember, however, that as early as May, 1966 the Ministry warned the Company in writing that the proposal involving the re-opening of seven level crossings, some of them on major roads, would be bound to raise serious difficulties.

This is not as the railway promoters and supporters imply, a matter simply between them and the Minister. One must consider the landowners and drainage authorities whose protection would disappear if the Company got into serious financial difficulties. There are also the interests of the thousands of motorists who use these coast roads, particularly in the summer; and even more there are the interests of the taxpayers and ratepayers who might ultimately be called upon to provide the funds to build new carriageway overbridges.

/In

16a.

In considering the objections of the Light Railway Company, it is important not to forget these other interested parties who by the nature of things do not put forward their views so strongly now, but who would rightly blame the Minister in the future if the Order were to be made.

I am sorry about the obvious disappointment of the Railway Company and their supporters but I cannot reverse my decision, or ask the Railways Board to delay any further their plans for disposal of the line.

(Sgd.) BARBARA CASTLE

BARBARA CASTLE

Date

6.
4th August, 1969.

Thank you for your letter of 10th July about your talks with Mr. Peter Benge-Abbott of the Kent and East Sussex Railway Association. I note that he would like not to have to proceed with the High Court action which the Railway Company initiated against my predecessor but you will know my views on the whole position as I have explained them in our earlier correspondence.

I think the whole point is that a decision was taken on the Railway Company's application for an Order, and this decision will be maintained unless and until the Courts rule to the contrary. Thus if the Company withdraw their action, there will still be no application for an Order before me, and any discussions with the Company could only be with a view to their making a fresh application. And without a Court ruling to the contrary, I shall continue to maintain that it is correct for me, in dealing with Light Railway Order applications, to take into account matters other than purely railway ones - in this case, the effect on road traffic and safety.

In this case, also, I think it is only fair to say once more that our views on the unacceptability of the interruption to traffic which would result from the re-opening of this line with its seven level crossings are now even stronger and will continue to grow in strength with the inevitable growth of traffic.

RICHARD MARSH

RICHARD MARSH



Hi Lazarus

28/7/70
✓
Lock

The Rt Hon

MC MP

From: William Deedes

RECEIVED IN

28 JUL 1970

PRIVATE OFFICE

27th July 1970

Dear John

In defeat, defiance; in victory, magnanimity - I believe Winston said something to that effect. I am sure your people will rise to this admirable aphorism after their victory in the Court of Appeal over the Kent & East Sussex Railway Association.

Admirable though this project is, I concede that an unofficial railway line stretching over 25 miles through Kent and East Sussex and crossing seven roads, two main ones, offers your Ministry problems. I accept, therefore, and so do the Railways' committee that its activities will have to be curtailed.

But I do not think that should entail its closing down. I have had a long session with the principal parties concerned. It is clear that the best of this enterprise could be kept going over a shorter distance involving fewer roads.

They would like to discuss possibilities with your railways people, and I think that a fair

Over/page 2...



request. Before any final decision is taken I hope you will agree to such a course. As I wrote some time ago to one of your predecessors, Barbara Castle, we ought even in this small island to be able to accommodate one or two ventures of this kind. It would be a tragedy, mourned by an astonishing variety and number of people, if the whole thing has to be packed up. If your anxieties about roads - and perhaps some other details - can be clarified in talks, a compromise seems to me possible. Will you give the idea a fair wind?

Yours
Bair

Rt. Hon. John Peyton, M.P.,
Minister of Transport,
St. Christopher House,
Southwark Street,
London, S.E.1.

Enc:



TREASURY SOLICITOR'S DEPARTMENT
MINISTRY OF TRANSPORT BRANCH
St. Christopher House, Southwark Street, LONDON S.E.1
Telex: 21352 Telegrams: Transminry London Telex
Telephone: WATERloo 7999, ext.

Our references: L.5412
Your references: T.67/285/RKP

R K Price Esq
Treasury Solicitor's Department
3 Central Buildings
Matthew Parker Street
LONDON SW1

13 October 1970

Dear Roy

ROTHER VALLEY RAILWAY CO LTD v MINISTRY OF TRANSPORT

Thank you for your letter of 6 October and for the copy of the duplicate order of the Court of Appeal which I will keep with our papers here.

I gather that discussions are still going on between the Ministry, the enthusiasts, British Rail and the County Councils with a view to seeing if some alternative proposals for the use of the line can be decided upon although nothing firm has come out of the discussions yet. Any further negotiations should not involve your Division - at least, I hope not!

Yours sincerely

Peter Greenwood

PE, PRITCHARD & CO.
SOLICITORS

WEN WORTH PRITCHARD
OWEN HUGHES
A. TOWNSEND
C. HARDINGE PRITCHARD
MICHAEL PRITCHARD
ENID L. PRITCHARD
C. KELVIN WARD
ANNE STURDY
A. PITCHFORTH
JOHN E. FREEMAN

109 KINGSWAY,
LONDON,
WC2B 6PZ

PLEASE QUOTE

OUR REF 14.EJ

TELEPHONE 01-405 9574 (4 LINES)

YOUR REF T67/285/BLL/Costs

ENC _____

AND AT
QUEEN ANNES CHAMBERS, 28, BROADWAY, S.W.1

27th April 1971.

Treasury Solicitor,
3 Central Buildings,
Matthew Parker Street,
London S.W.1.

Dear Sirs,

Rother Valley Railway Co. Ltd.
-v- Ministry of Transport.

We enclose herewith our client's cheque
for £1,898.39 in settlement of your taxed costs.

Yours faithfully,

Shapiro G



Chg.
£ 1898:39

30 APR 1971
sent to Accounts Branch.

APPENDIX 3

Rother Valley Accounts

Charity number: 1088452

ROTHER VALLEY RAILWAY HERITAGE TRUST

TRUSTEES' REPORT AND FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 DECEMBER 2019

ROTHER VALLEY RAILWAY HERITAGE TRUST

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ROTHER VALLEY RAILWAY HERITAGE TRUST

**REFERENCE AND ADMINISTRATIVE DETAILS OF THE CHARITY, ITS TRUSTEES AND ADVISERS
FOR THE YEAR ENDED 31 DECEMBER 2019**

Trustees

Mr Gardner Crawley BSc(Eng) FICE (Chairman)
Mr David Felton FCA
Mr Michael Hart OBE
Mr Graham Peters BSc DL
Mr Richard Broyd OBE
Mr David Keay CEng, FIMechE, FIET
Mr David Slack FRICS, FIAGrM, MRAC, BEM

Charity registered number

1088452

Principal office

Robertsbridge Junction Station, Station Road, Robertsbridge, East Sussex, TN32 5DG

Independent auditor

Crowe U.K. LLP, Riverside House, 40 - 46 High Street, Maidstone, Kent, ME14 1JH

Bankers

CAF Bank Ltd, 25 Kings Hill Avenue, Kings Hill, West Malling, Kent, ME19 4JQ

ROTHER VALLEY RAILWAY HERITAGE TRUST

TRUSTEES' REPORT FOR THE YEAR ENDED 31 DECEMBER 2019

The Trustees present their annual report together with the audited financial statements of the group and the charity Rother Valley Railway Heritage Trust (the charity and the group) for the year ended 31 December 2019. The Trustees confirm that the Annual report and financial statements of the charity and the group comply with the current statutory requirements, the requirements of the charity and the group's governing document and the provisions of the Statement of Recommended Practice (SORP) "Accounting and Reporting by Charities" issued in 2015.

Objectives and Activities

a. POLICIES AND OBJECTIVES

The objects of the charity are to preserve for the benefit of the public of Kent and East Sussex and of the nation the historical, architectural and constructional heritage that may exist in and around Kent and East Sussex in buildings (including any building as defined in section 336 of the Town and Country Planning Act 1990) or structures of particular beauty or historical, architectural or constructional interest.

Rother Valley Railway Limited a majority owned subsidiary of the charity continues to act on the reconstruction of the Kent & East Sussex Railway from Bodiam to Robertsbridge in East Sussex to preserve the heritage of the historic railway.

The charity makes grants to achieve these objectives.

In setting these objectives and planning for activities, the Trustees have given due consideration to general guidance published by the Charity Commission relating to public benefit, including the guidance 'Public benefit: running a charity (PB2)'.

Achievements and performance

a. REVIEW OF ACTIVITIES

In preparing a review of the activities for the year, the Trustees have referred to the guidance contained in the Charity Commission's general guidance on public benefit when reviewing the Charity's aims and objectives and in planning future activities.

During the year, the charity made grants of £360,000 in accordance with its objectives. These grants enabled the continuation of the restoration of the historic trackbed between Junction Road and Robertsbridge station. In addition further grants were made for the rebuilding of a vintage 1917 Manning Wardle steam locomotive, *Charwelton*, and an initial grant was made towards the costs of dismantling and recovering the turntable at Hither Green MPD, donated to the Trust for eventual reconstruction and reuse at Robertsbridge Junction Station.

b. GOING CONCERN

After making appropriate enquiries, the trustees have a reasonable expectation that the charity has adequate resources to continue in operational existence for the foreseeable future. For this reason they continue to adopt the going concern basis in preparing the financial statements. Further details regarding the adoption of the going concern basis can be found in the Accounting Policies.

c. PUBLIC BENEFIT

The Trustees consider that the charity's objectives are for the public benefit and that its activities, achievements and performance are consistent with its objectives.

To achieve its objectives the charity:-

* makes donations for the acquisition, preservation and restoration of locomotives, rolling stock and other items

ROTHER VALLEY RAILWAY HERITAGE TRUST

TRUSTEES' REPORT (continued) FOR THE YEAR ENDED 31 DECEMBER 2019

of historical, operational, educational and general interest;

- * maintains, improves and develops the railway and the land, works and buildings relating thereto;
- * encourages and promotes the interest, support and participation of young people in the railway; and maintains a public museum of objects of interest in the history of the railway.

d. FUNDRAISING REGULATION

Rother Valley Railway Heritage Trust complies with sector best practice. No complaints were received with regards to fundraising throughout the course of the year and no professional fundraisers or commercial partners conducted fundraising as charity representatives. The board of trustees monitors and manages its fundraising regulation and compliance which are discussed at board meetings.

Donations received come from a variety of donors, with the majority coming from two main supporters of the charity. The Trustees regard its relationship with donors as highly important and it looks to retain the support of its donors for many years to come.

The Trustees are continuing to look for further donors and will be implementing new policies to help aid the progression of the restoration project.

Financial review

a. RESERVES POLICY AND FUTURE DEVELOPMENTS

The Trustees regularly review the reserves position of the charity and will only carry out projects if the necessary reserves are available. The total expenditure anticipated for the complete reconstruction of the railway is in excess of £6 million. To date the charity has received approximately £4m of funding and is continuing to seek future funding to enable the completion of the railway.

The charity's unrestricted reserves as at 31 December 2019 were £852,223 (2018 - £1,121,520). The Trustees believe these to be the free reserves as investment in tangible fixed assets for the railway restoration are the objectives of the charity.

Since the balance sheet date, the COVID-19 pandemic has emerged and its impact has been felt around the world. As a result of the UK lockdown throughout the Spring of 2020, work on the railway was interrupted and volunteers were unable to access the site. Whilst this may have delayed some of the projects, the Trustees are confident that the work will continue as the situation improves.

The COVID-19 pandemic also meant that the Public Inquiry into the TWAO application for the reconstruction of the Junction Road to Robertsbridge section of the line which had been scheduled for May 2020 was postponed. At the date of sign off, no new date for the Inquiry has been set but the Trustees are hopeful that this will be before May 2021.

Structure, governance and management

a. CONSTITUTION

The charity is an unincorporated association registered with the Charity Commission and constituted under a Trust Deed dated 17 January 2001. Its objects and powers are set out therein.

b. METHOD OF APPOINTMENT OR ELECTION OF TRUSTEES

The management of the charity and the group is the responsibility of the Trustees who are elected and co-opted under the terms of the Trust deed.

ROTHER VALLEY RAILWAY HERITAGE TRUST

TRUSTEES' REPORT (continued) FOR THE YEAR ENDED 31 DECEMBER 2019

c. CHARITY GOVERNANCE CODE

The Trustees have taken note of the new Charity Governance Code. The Trustees have attended seminars in the year and are now implementing policies to comply with the Code.

d. RISK MANAGEMENT

The Trustees have given consideration to the major risks to which the Trust is exposed, and have considered the systems designed to mitigate exposure to these risks, in particular regular Trustee's meetings with a careful review of the Trust's funding and available resources to ensure sufficient monies are held to meet and manage the Trust's costs and current and ongoing commitments.

TRUSTEES' RESPONSIBILITIES STATEMENT

The Trustees are responsible for preparing the Trustees' Report and the financial statements in accordance with applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice).

The law applicable to charities in England & Wales requires the Trustees to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the charity and the group and of the incoming resources and application of resources of the group for that period. In preparing these financial statements, the Trustees are required to:

- select suitable accounting policies and then apply them consistently;
- observe the methods and principles in the Charities SORP;
- make judgments and accounting estimates that are reasonable and prudent;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the group will continue in operation.

The Trustees are responsible for keeping proper accounting records that are sufficient to show and explain the charity and the group's transactions and disclose with reasonable accuracy at any time the financial position of the group and enable them to ensure that the financial statements comply with the Charities Act 2011, the Charity (Accounts and Reports) Regulations 2008 and the provisions of the trust deed. They are also responsible for safeguarding the assets of the charity and the group and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

This report was approved by the Trustees, on 28.10.20 and signed on their behalf by:



Mr David Felton FCA

ROTHER VALLEY RAILWAY HERITAGE TRUST

INDEPENDENT AUDITOR'S REPORT TO THE TRUSTEES OF ROTHER VALLEY RAILWAY HERITAGE TRUST

OPINION

We have audited the financial statements of Rother Valley Railway Heritage Trust (the 'parent charity') and its subsidiaries (the 'group') for the year ended 31 December 2019 set out in the Consolidated Statement of Financial Activities, Consolidated Balance Sheet and the company Balance Sheet. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 'The Financial Reporting Standard applicable in the UK and Republic of Ireland' (United Kingdom Generally Accepted Accounting Practice).

The financial statements have been prepared in accordance with Accounting and Reporting by Charities preparing their accounts in accordance with the Financial Reporting Standards applicable in the UK and Republic of Ireland (FRS 102) in preference to the Accounting and Reporting by Charities; Statement of Recommended Practice issued on 1 April 2005 which is referred to in the extant regulations but has been withdrawn.

This has been done in order for the accounts to provide a true and fair view in accordance with the Generally Accepted Accounting Practice effective for reporting periods beginning on or after 1 January 2015.

In our opinion the financial statements:

- give a true and fair view of the state of the group's and of the parent charity's affairs as at 31 December 2019 and of the group's incoming resources and application of resources for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice; and
- have been prepared in accordance with the requirements of the Charities Act 2011.

BASIS FOR OPINION

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of our report. We are independent of the group in accordance with the ethical requirements that are relevant to our audit of the financial statements in the United Kingdom, including the Financial Reporting Council's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

CONCLUSIONS RELATING TO GOING CONCERN

We have nothing to report in respect of the following matters in relation to which the ISAs (UK) require us to report to you where:

- the Trustees' use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the Trustees have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the group's or the parent charity's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

ROTHER VALLEY RAILWAY HERITAGE TRUST

INDEPENDENT AUDITOR'S REPORT TO THE TRUSTEES OF ROTHER VALLEY RAILWAY HERITAGE TRUST

OTHER INFORMATION

The Trustees are responsible for the other information. The other information comprises the information included in the Annual Report, other than the financial statements and our Auditor's Report thereon. Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in this regard.

MATTERS ON WHICH WE ARE REQUIRED TO REPORT BY EXCEPTION

We have nothing to report in respect of the following matters where the Charities (Accounts and Reports) Regulations 2008 requires us to report to you if, in our opinion:

- the information given in the Trustees' Report is inconsistent in any material respect with the financial statements; or
- the parent charity has not kept sufficient accounting records; or
- the parent charity financial statements are not in agreement with the accounting records and returns; or
- we have not received all the information and explanations we require for our audit.

RESPONSIBILITIES OF TRUSTEES

As explained more fully in the Trustees' Responsibilities Statement, the Trustees are responsible for the preparation of financial statements which give a true and fair view, and for such internal control as the Trustees determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Trustees are responsible for assessing the group's and the parent charity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Trustees either intend to liquidate the group or the parent charity or to cease operations, or have no realistic alternative but to do so.

ROTHER VALLEY RAILWAY HERITAGE TRUST

INDEPENDENT AUDITOR'S REPORT TO THE TRUSTEES OF ROTHER VALLEY RAILWAY HERITAGE TRUST

AUDITOR'S RESPONSIBILITIES FOR THE AUDIT OF THE FINANCIAL STATEMENTS

We have been appointed as auditor under section 151 of the Charities Act 2011 and report in accordance with the Act and relevant regulations made or having effect thereunder.

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an Auditor's Report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website at: www.frc.org.uk/auditorsresponsibilities. This description forms part of our Auditor's Report.

USE OF OUR REPORT

This report is made solely to the charity's trustees, as a body, in accordance with Part 4 of the Charities (Accounts and Reports) Regulations 2008. Our audit work has been undertaken so that we might state to the charity's trustees those matters we are required to state to them in an Auditor's Report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the charity and its trustees, as a body, for our audit work, for this report, or for the opinions we have formed.



Crowe U.K. LLP

Ian Weekes

Riverside House
40 - 46 High Street
Maidstone
Kent
ME14 1JH
Date:

28th October 2020

Crowe U.K. LLP is eligible to act as an auditor in terms of section 1212 of the Companies Act 2006.

ROTHER VALLEY RAILWAY HERITAGE TRUST

**CONSOLIDATED STATEMENT OF FINANCIAL ACTIVITIES
FOR THE YEAR ENDED 31 DECEMBER 2019**

	Note	Unrestricted funds 2019 £	Restricted funds 2019 £	Total funds 2019 £	Total funds 2018 £
INCOME FROM:					
Donations and legacies	3	23,525	125	23,650	609,795
Other trading activities	4	7,459	-	7,459	6,734
Investments	5	918	-	918	509
TOTAL INCOME		31,902	125	32,027	617,038
EXPENDITURE ON:					
Charitable activities		50,167	59,117	109,284	114,376
TOTAL EXPENDITURE	9	50,167	59,117	109,284	114,376
Transfers between Funds	17	21,349	(21,349)	-	-
NET MOVEMENT IN FUNDS		3,084	(80,341)	(77,257)	502,662
RECONCILIATION OF FUNDS:					
Total funds brought forward		3,727,828	108,811	3,836,639	3,333,977
Net income / (expenditure) attributable to Parent Charity		(18,299)	(58,992)	(77,291)	459,029
Total funds after net income		3,709,529	49,819	3,759,348	3,793,006
Net income attributable to Non-controlling interest		34	-	34	62
TOTAL FUNDS CARRIED FORWARD		3,730,912	28,470	3,759,382	3,836,639


The notes on pages 11 to 24 form part of these financial statements.

ROTHER VALLEY RAILWAY HERITAGE TRUST

CONSOLIDATED BALANCE SHEET AS AT 31 DECEMBER 2019

	Note	£	2019 £	£	2018 £
FIXED ASSETS					
Tangible assets	11		3,330,176		3,042,535
Investments	12		2,000		2,000
			<u>3,332,176</u>		<u>3,044,535</u>
CURRENT ASSETS					
Debtors	13	22,282		16,985	
Cash at bank and in hand		426,741		796,426	
		<u>449,023</u>		<u>813,411</u>	
CREDITORS: amounts falling due within one year	14	(21,817)		(21,307)	
NET CURRENT ASSETS			<u>427,206</u>		<u>792,104</u>
NET ASSETS			<u>3,759,382</u>		<u>3,836,639</u>
CHARITY FUNDS					
Restricted funds	17		28,470		108,811
Unrestricted funds	17		3,730,771		3,727,478
TOTAL FUNDS			<u>3,759,241</u>		<u>3,836,289</u>
NON-CONTROLLING INTERESTS	16		141		350
			<u>3,759,382</u>		<u>3,836,639</u>

The financial statements were approved by the Trustees and authorised for issue on 28.10.20 and signed on their behalf, by:


Mr David Felton FCA

The notes on pages 11 to 24 form part of these financial statements.

ROTHER VALLEY RAILWAY HERITAGE TRUST

CHARITY BALANCE SHEET AS AT 31 DECEMBER 2019

	Note	£	2019 £	£	2018 £
FIXED ASSETS					
Tangible assets	11		441,774		434,568
Investments	12		37,749		37,748
			<u>479,523</u>		<u>472,316</u>
CURRENT ASSETS					
Debtors	13	35		-	
Cash at bank		406,415		763,114	
		<u>406,450</u>		<u>763,114</u>	
CREDITORS: amounts falling due within one year	14	(5,280)		(5,100)	
NET CURRENT ASSETS			401,170		758,014
NET ASSETS			<u>880,693</u>		<u>1,230,330</u>
CHARITY FUNDS					
Restricted funds	17		28,470		108,810
Unrestricted funds	17		852,223		1,121,520
TOTAL FUNDS			<u>880,693</u>		<u>1,230,330</u>

The financial statements were approved by the Trustees and authorised for issue on 28.10.20 and signed on their behalf, by:


Mr David Felton FCA

The notes on pages 11 to 24 form part of these financial statements.

ROTHER VALLEY RAILWAY HERITAGE TRUST

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2019

1. ACCOUNTING POLICIES

1.1 Basis of preparation of financial statements

The financial statements have been prepared in accordance with the Charities SORP (FRS 102) - Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102 Section 1A small entities) (effective 1 January 2019), the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102) and the Charities Act 2011.

Rother Valley Railway Heritage Trust constitutes a public benefit entity as defined by FRS 102. Assets and liabilities are initially recognised at historical cost or transaction value unless otherwise stated in the relevant accounting policy.

The Statement of Financial Activities (SOFA) and Balance Sheet consolidate the financial statements of the charity and its subsidiary undertaking. The results of the subsidiary are consolidated on a line by line basis.

No separate SOFA has been presented for the charity alone as permitted by Charities SORP (FRS 102).

The net income and expenditure account for the year dealt with in the accounts of the charity was a deficit of £349,638 (2018 - £281,585 surplus).

After making appropriate enquiries, the trustees have a reasonable expectation that the charity has adequate resources to continue in operational existence for the foreseeable future. For this reason they continue to adopt the going concern basis in preparing the financial statements.

1.2 Basis of consolidation

The financial statements consolidate the accounts of Rother Valley Railway Heritage Trust and all of its subsidiary undertaking. The results of the subsidiary are consolidated on a line by line basis.

The results of subsidiaries acquired during the year are included from the effective date of acquisition.

1.3 Fund accounting

General funds are unrestricted funds which are available for use at the discretion of the Trustees in furtherance of the general objectives of the charity and which have not been designated for other purposes.

Restricted funds are funds which are to be used in accordance with specific restrictions imposed by donors or which have been raised by the charity for particular purposes. The costs of raising and administering such funds are charged against the specific fund. The aim and use of each restricted fund is set out in the notes to the financial statements.

Investment income, gains and losses are allocated to the appropriate fund.

ROTHER VALLEY RAILWAY HERITAGE TRUST

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2019

1. ACCOUNTING POLICIES (continued)

1.4 Income

All income is recognised once the charity has entitlement to the income, it is probable that the income will be received and the amount of income receivable can be measured reliably.

For legacies, entitlement is taken as the earlier of the date on which either: the charity is aware that probate has been granted, the estate has been finalised and notification has been made by the executor(s) to the Trust that a distribution will be made, or when a distribution is received from the estate. Receipt of a legacy, in whole or in part, is only considered probable when the amount can be measured reliably and the charity has been notified of the executor's intention to make a distribution. Where legacies have been notified to the charity, or the charity is aware of the granting of probate, and the criteria for income recognition have not been met, then the legacy is treated as a contingent asset and disclosed if material.

Income tax recoverable in relation to donations received under Gift Aid or deeds of covenant is recognised at the time of the donation.

Income tax recoverable in relation to investment income is recognised at the time the investment income is receivable.

1.5 Expenditure

Expenditure is recognised once there is a legal or constructive obligation to transfer economic benefit to a third party, it is probable that a transfer of economic benefits will be required in settlement and the amount of the obligation can be measured reliably. Expenditure is classified by activity. The costs of each activity are made up of the total of direct costs and shared costs, including support costs involved in undertaking each activity. Direct costs attributable to a single activity are allocated directly to that activity. Shared costs which contribute to more than one activity and support costs which are not attributable to a single activity are apportioned between those activities on a basis consistent with the use of resources. Central staff costs are allocated on the basis of time spent, and depreciation charges allocated on the portion of the asset's use.

Support costs are those costs incurred directly in support of expenditure on the objects of the charity.

Grants payable are charged in the year when the offer is made except in those cases where the offer is conditional, such grants being recognised as expenditure when the conditions attaching are fulfilled. Grants offered subject to conditions which have not been met at the year end are noted as a commitment, but not accrued as expenditure.

All expenditure is inclusive of irrecoverable VAT.

Charitable activities and Governance costs are costs incurred on the charity's educational operations, including support costs and costs relating to the governance of the charity apportioned to charitable activities.

ROTHER VALLEY RAILWAY HERITAGE TRUST

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2019

1. ACCOUNTING POLICIES (continued)

1.6 Tangible fixed assets and depreciation

All assets costing more than £50 are capitalised.

A review for impairment of a fixed asset is carried out if events or changes in circumstances indicate that the carrying value of any fixed asset may not be recoverable. Shortfalls between the carrying value of fixed assets and their recoverable amounts are recognised as impairments. Impairment losses are recognised in the Statement of Financial Activities.

Tangible fixed assets are carried at cost, net of depreciation and any provision for impairment. Depreciation is provided at rates calculated to write off the cost of fixed assets, less their estimated residual value, over their expected useful lives on the following bases:

Permanent way	-	2% straight line
Buildings and structures	-	10% straight line
Land	-	No depreciation
Fixtures & fittings	-	20% straight line
Equipment	-	25% straight line
Rolling stock	-	5%/10% straight line

1.7 Investments

Investments are stated at market value at the balance sheet date. The Statement of financial activities includes the net gains and losses arising on revaluations and disposals throughout the year.

(i) Subsidiary undertakings

Investments in subsidiaries are valued at cost less provision for impairment.

1.8 Interest receivable

Interest on funds held on deposit is included when receivable and the amount can be measured reliably by the charity; this is normally upon notification of the interest paid or payable by the Bank.

1.9 Debtors

Trade and other debtors are recognised at the settlement amount after any trade discount offered. Prepayments are valued at the amount prepaid net of any trade discounts due.

1.10 Cash at Bank and in hand

Cash at bank and in hand includes cash and short term highly liquid investments with a short maturity of three months or less from the date of acquisition or opening of the deposit or similar account.

ROTHER VALLEY RAILWAY HERITAGE TRUST

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2019

1. ACCOUNTING POLICIES (continued)

1.11 Liabilities and provisions

Liabilities are recognised when there is an obligation at the Balance Sheet date as a result of a past event, it is probable that a transfer of economic benefit will be required in settlement, and the amount of the settlement can be estimated reliably. Liabilities are recognised at the amount that the charity anticipates it will pay to settle the debt or the amount it has received as advanced payments for the goods or services it must provide. Provisions are measured at the best estimate of the amounts required to settle the obligation. Where the effect of the time value of money is material, the provision is based on the present value of those amounts, discounted at the pre-tax discount rate that reflects the risks specific to the liability. The unwinding of the discount is recognised within interest payable and similar charges.

1.12 Critical accounting estimates and areas of judgment

Estimates and judgments are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances.

Critical accounting estimates and assumptions:

Tangible fixed assets: the directors annually assess both the residual value of these assets and the expected useful life of such assets based on experience.

2. GENERAL INFORMATION

The principal activity of the charity during the year was to preserve for the benefit of the public of Kent and East Sussex and of the nation the historical, architectural and constructional heritage that may exist in and around Kent and East Sussex in buildings or structures of particular beauty or historical, architectural or constructional interest.

The charity is an unincorporated charity which is registered in England and Wales (1088452). The address of the registered office is:

Robertsbridge Junction Station
Station Road
Robertsbridge
East Sussex
TN32 5DG

ROTHER VALLEY RAILWAY HERITAGE TRUST

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2019**

3. INCOME FROM DONATIONS AND LEGACIES

	Unrestricted funds 2019 £	Restricted funds 2019 £	Total funds 2019 £	Total funds 2018 £
Donations	7,051	125	7,176	600,863
Other similar incoming resources	16,474	-	16,474	8,932
	<hr/>	<hr/>	<hr/>	<hr/>
Total donations and legacies	23,525	125	23,650	609,795
	<hr/>	<hr/>	<hr/>	<hr/>
Total 2018	608,254	1,542	609,796	
	<hr/>	<hr/>	<hr/>	

4. FUNDRAISING INCOME

	Unrestricted funds 2019 £	Restricted funds 2019 £	Total funds 2019 £	Total funds 2018 £
Scrap sales	108	-	108	215
Rent received	7,351	-	7,351	6,519
	<hr/>	<hr/>	<hr/>	<hr/>
	7,459	-	7,459	6,734
	<hr/>	<hr/>	<hr/>	<hr/>
Total 2018	6,734	-	6,734	
	<hr/>	<hr/>	<hr/>	

5. INVESTMENT INCOME

	Unrestricted funds 2019 £	Restricted funds 2019 £	Total funds 2019 £	Total funds 2018 £
Interest received	918	-	918	509
	<hr/>	<hr/>	<hr/>	<hr/>
Total 2018	509	-	509	
	<hr/>	<hr/>	<hr/>	

ROTHER VALLEY RAILWAY HERITAGE TRUST

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2019**

6. DIRECT COSTS

	Principal activity £	Total 2019 £	Total 2018 £
Tools and general consumables	1,292	1,292	1,057
Supervision	-	-	39
Rolling stock restoration	994	994	3,533
Repairs and maintenance	267	267	2,169
Diesel	10	10	30
Disposal of fixed assets	-	-	1,127
Depreciation	81,767	81,767	75,903
	<u>84,330</u>	<u>84,330</u>	<u>83,858</u>
<i>Total 2018</i>	<u>83,858</u>	<u>83,858</u>	

7. SUPPORT COSTS

	Principal activity £	Total 2019 £	Total 2018 £
Rent paid	5,001	5,001	4,944
Insurance	4,742	4,742	4,688
Electricity and heating	1,560	1,560	1,376
Water	210	210	219
Telephone	497	497	467
Waste Collection	755	755	663
Subscriptions	200	200	200
Legal and professional	883	883	13
Bank charges	197	197	118
Forestry and conversation	3,075	3,075	3,146
Cleaning	7	7	38
Sundry expenses	2,347	2,347	9,509
Health and safety expenses	200	200	37
	<u>19,674</u>	<u>19,674</u>	<u>25,418</u>
<i>Total 2018</i>	<u>25,418</u>	<u>25,418</u>	

ROTHER VALLEY RAILWAY HERITAGE TRUST

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2019**

8. GOVERNANCE COSTS

	Unrestricted funds 2019 £	Restricted funds 2019 £	Total funds 2019 £	Total funds 2018 £
Governance Auditors' remuneration	5,280	-	5,280	5,100

9. ANALYSIS OF EXPENDITURE BY EXPENDITURE TYPE

	Depreciation 2019 £	Other costs 2019 £	Total 2019 £	Total 2018 £
Direct costs - principal activity	81,767	2,563	84,330	83,858
Support costs - principal activity	-	19,674	19,674	25,418
Charitable activities	81,767	22,237	104,004	109,276
Expenditure on governance	-	5,280	5,280	5,100
Total 2019	81,767	27,517	109,284	114,376
Total 2018	-	-	-	-

10. NET INCOME/(EXPENDITURE)

This is stated after charging:

	2019 £	2018 £
Depreciation of tangible fixed assets:		
- owned by the charitable group	81,767	75,903
Auditor's remuneration - audit	5,280	5,100
(Profit)/Loss on disposal of fixed assets	-	1,127

ROTHER VALLEY RAILWAY HERITAGE TRUST

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2019

11. TANGIBLE FIXED ASSETS

Group	Permanent way £	Buildings and structures £	Land £	Fixtures, fittings and equipment £	Rolling Stock £	Total £
Cost						
At 1 January 2019	2,787,256	127,454	434,568	18,305	123,219	3,490,802
Additions	301,759	-	7,206	1,327	59,117	369,409
Disposals	-	-	-	(2,611)	-	(2,611)
At 31 December 2019	3,089,015	127,454	441,774	17,021	182,336	3,857,600
Depreciation						
At 1 January 2019	341,393	28,829	-	15,318	62,727	448,267
Charge for the year	61,790	11,113	-	1,630	7,235	81,768
On disposals	-	-	-	(2,611)	-	(2,611)
At 31 December 2019	403,183	39,942	-	14,337	69,962	527,424
Net book value						
At 31 December 2019	2,685,832	87,512	441,774	2,684	112,374	3,330,176
At 31 December 2018	2,445,863	98,625	434,568	2,987	60,492	3,042,535
Charity						Land £
Cost						
At 1 January 2019						434,568
Additions						7,206
At 31 December 2019						441,774
Depreciation						
At 1 January 2019 and 31 December 2019						-
Net book value						
At 31 December 2019						441,774
At 31 December 2018						434,568

ROTHER VALLEY RAILWAY HERITAGE TRUST

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2019**

12. FIXED ASSET INVESTMENTS

Group	Unlisted Investments £
At 1 January 2019 and 31 December 2019	<u>2,000</u>

Unlisted investments represent Rother Valley Railway Limited's 8 ordinary shares (nominal value of £250 each) of The 4253 Locomotive Co Limited. This represents less than 1% of the share capital.

Charity	Shares in group undertakings £
At 1 January 2019	37,748
Additions	<u>1</u>
At 31 December 2019	<u>37,749</u>

Shares in group undertakings represent Rother Valley Heritage Trust's holding in Rother Valley Railway Limited.

During the year the Trust acquired 1 additional share in Rother Valley Railway Limited, taking their overall holding to 99 shares, representing 99% of the issued share capital..

13. DEBTORS

	<u>Group</u>		<u>Charity</u>	
	2019	2018	2019	2018
	£	£	£	£
Other debtors	18,336	12,159	35	-
Prepayments and accrued income	3,946	4,826	-	-
	<u>22,282</u>	<u>16,985</u>	<u>35</u>	<u>-</u>

ROTHER VALLEY RAILWAY HERITAGE TRUST

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2019**

14. CREDITORS: Amounts falling due within one year

	<u>Group</u>		<u>Charity</u>	
	2019	2018	2019	2018
	£	£	£	£
Other creditors	16,537	16,207	-	-
Accruals and deferred income	5,280	5,100	5,280	5,100
	<u>21,817</u>	<u>21,307</u>	<u>5,280</u>	<u>5,100</u>

15. FINANCIAL INSTRUMENTS

	2019	2018
	£	£
Financial assets measured at amortised cost	<u>445,075</u>	<u>808,584</u>
Financial liabilities measured at amortised cost	<u>(18,493)</u>	<u>(21,307)</u>

Financial assets measured at amortised cost comprise cash at bank and other debtors

Financial liabilities measured at amortised cost comprise other creditors and accruals.

16. NON-CONTROLLING INTERESTS

Equity	£
At 1 January 2019	350
Proportion of profit/(loss) after taxation for the year	(34)
Purchase of non-controlling interests	<u>(175)</u>
At 31 December 2019	<u>141</u>

During the period the Non Controlling Interest saw their share in Rother Valley Railway Limited decrease from 2% to 1% as a result of a share being sold to the Trust..

ROTHER VALLEY RAILWAY HERITAGE TRUST

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2019

17. STATEMENT OF FUNDS

STATEMENT OF FUNDS - CURRENT YEAR

	Balance at 1 January 2019 £	Income £	Expenditure £	Transfers in/out £	Gains/ (Losses) £	Balance at 31 December 2019 £
Unrestricted funds						
General Funds - all funds	3,727,478	31,902	(50,167)	21,524	34	3,730,771
Minority interest	350	-	-	(175)	(34)	141
	<u>3,727,828</u>	<u>31,902</u>	<u>(50,167)</u>	<u>21,349</u>	<u>-</u>	<u>3,730,912</u>
Restricted funds						
Rolvenden Carriage Shed Fund	21,349	-	-	(21,349)	-	-
Hawkhurst Signal Box Fund	623	-	-	-	-	623
BP Tank Restoration Fund	227	125	-	-	-	352
Charwelton Restoration	86,362	-	(59,117)	-	-	27,245
Gazebo fund	250	-	-	-	-	250
	<u>108,811</u>	<u>125</u>	<u>(59,117)</u>	<u>(21,349)</u>	<u>-</u>	<u>28,470</u>
Total of funds	<u>3,836,639</u>	<u>32,027</u>	<u>(109,284)</u>	<u>-</u>	<u>-</u>	<u>3,759,382</u>

Restricted funds are funds which have been given for a particular purpose or project. These funds have been 'ring fenced' for use in support of the aims of the respective fund.

Work was completed on the construction of the Rolvenden Carriage Shed in the period and the remaining balance was transferred into unrestricted reserves with the agreement of the donors.

The Charwelton Restoration Fund is monies for the rebuilding of a vintage 1917 Manning Wardle steam Locomotive and grants were made during the year to further this cause.

Other funds are restricted in line with the purpose indicated in the name of the fund.

ROTHER VALLEY RAILWAY HERITAGE TRUST

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2019**

17. STATEMENT OF FUNDS (continued)

STATEMENT OF FUNDS - PRIOR YEAR

	<i>Balance at 1 January 2018 £</i>	<i>Income £</i>	<i>Expenditure £</i>	<i>Gains/ (Losses) £</i>	<i>Balance at 31 December 2018 £</i>
General funds					
General Funds - all funds	3,201,464	615,496	(89,420)	(62)	3,727,478
Minority interest	288	-	-	62	350
Restricted funds					
Rolvenden Carriage Shed Fund	29,401	-	(8,052)	-	21,349
Hawkhurst Signal Box Fund	623	-	-	-	623
BP Tank Restoration Fund	2,201	1,292	(3,266)	-	227
Charwelton Restoration	100,000	-	(13,638)	-	86,362
Gazebo fund	-	250	-	-	250
	<u>132,225</u>	<u>1,542</u>	<u>(24,956)</u>	<u>-</u>	<u>108,811</u>
Total of funds	<u>3,333,977</u>	<u>617,038</u>	<u>(114,376)</u>	<u>-</u>	<u>3,836,639</u>

18. ANALYSIS OF NET ASSETS BETWEEN FUNDS

ANALYSIS OF NET ASSETS BETWEEN FUNDS - CURRENT YEAR

	Unrestricted funds 2019 £	Restricted funds 2019 £	Total funds 2019 £
Tangible fixed assets	3,330,178	-	3,330,178
Fixed asset investments	2,000	-	2,000
Current assets	420,551	28,470	449,021
Creditors due within one year	(21,817)	-	(21,817)
	<u>3,730,912</u>	<u>28,470</u>	<u>3,759,382</u>

ROTHER VALLEY RAILWAY HERITAGE TRUST

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2019**

18. ANALYSIS OF NET ASSETS BETWEEN FUNDS (continued)

ANALYSIS OF NET ASSETS BETWEEN FUNDS - PRIOR YEAR

	<i>Unrestricted funds 2018 £</i>	<i>Restricted funds 2018 £</i>	<i>Total funds 2018 £</i>
Tangible fixed assets	3,042,536	-	3,042,563
Fixed asset investments	2,000	-	2,000
Current assets	704,599	108,811	813,410
Creditors due within one year	(21,307)	-	(21,307)
	<u>3,727,828</u>	<u>108,811</u>	<u>3,836,639</u>

19. CAPITAL COMMITMENTS

At 31 December 2019 the group and charity had capital commitments as follows:

	<u>Group</u>		<u>Charity</u>	
	2019 £	2018 £	2019 £	2018 £
Contracted for but not provided in these financial statements	<u>51,178</u>	<u>159,315</u>	<u>51,178</u>	<u>159,315</u>

20. OPERATING LEASE COMMITMENTS

At 31 December 2019 the total of the group's future minimum lease payments under non-cancellable operating leases was:

Group	2019 £	2018 £
Amounts payable:		
Within 1 year	<u>5,000</u>	<u>5,000</u>

ROTHER VALLEY RAILWAY HERITAGE TRUST

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2019

21. RELATED PARTY TRANSACTIONS

During the year Rother Valley Railway Heritage Trust gave grants to Rother Valley Railway Limited totalling £360,000 (2018- £301,000) in relation to various construction projects on reconstruction of the Rother Valley Railway. As at 31 December 2019 £nil (2018 - £nil) was owed to Rother Valley Railway Limited.

During the year rent of £1 (2018 - £1) was paid by Rother Valley Railway Limited to Rother Valley Railway Heritage Trust.

During the year consultancy services of £9,991 (2018 - £18,405) were received from David Gillett Consulting Limited, a company of which D Gillett is a director and is also a director of Rother Valley Railway Limited. As at 31 December 2019 £nil (2018 - £nil) was owed by Rother Valley Railway Limited.

The charity does not have any employees. The key management personnel are considered to be the trustees who receive no remuneration.

22. PRINCIPAL SUBSIDIARIES

Rother Valley Railway Limited

Subsidiary name	Rother Valley Railway Limited
Company registration number	2613553
Basis of control	
Equity shareholding %	99%
Total assets as at 31 December 2019	£ 2,932,974
Total liabilities as at 31 December 2019	£ (2,925,045)
Total equity as at 31 December 2019	£ 7,929
Turnover for the year ended 31 December 2019	£ 99,624
Expenditure for the year ended 31 December 2019	£ (103,045)
Loss for the year ended 31 December 2019	£ (3,421)

ROTHER VALLEY **RAILWAY LTD**

DIRECTORS REPORT AND UNAUDITED FINANCIAL STATEMENTS

**FOR THE YEAR ENDED
31st DECEMBER 2019**



ROTHER VALLEY RAILWAY LTD

COMPANY INFORMATION

Directors: R Broyd, OBE
G S Crawley, BSc(Eng), FICE
R N Evans
D J Felton, FCA
D Gillett, CBE, BSc(Civ Eng), MICE, MIEE CEng
M C Hart, OBE
D W Keay, CEng, FIMechE, FIET
D J Slack, BEM, FRICS, FIAGR, MRAC

Secretary: D J Felton, FCA

Company number: 2613553

Registered Office: 3-4, Bower Terrace
Tonbridge Road
Maidstone
Kent ME16 8RY

Business Address: Robertsbridge Junction Station
Station Road
Robertsbridge
East Sussex
TN32 5DG

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ROTHER VALLEY RAILWAY LTD

DIRECTOR'S REPORT

The directors present their report and financial statements for the year ended 31st December 2019

Principal Activity

The principal activity of the Company continues to be the reconstruction of the Kent & East Sussex Railway from Bodiam to Robertsbridge in East Sussex.

Results and Dividends

The results for the year ended 31st December 2019 are set out in the financial statements on pages 6 to 11. There was a loss for the year before and after taxation of £3,421 (2018: Loss £3,093) which has been added to the deficit on reserves. No dividend can be declared.

Share Capital

The present authorised and allotted share capital is set out in note 9 of the financial statements.

The Company is controlled by the Trustees of Rother Valley Railway Heritage Trust, a registered charity no. 1088452.

Fixed Assets

Details of changes in fixed assets are given in note 4 of the financial statements.

Directors

The following directors have held office since 1 January 2019;

R Broyd Esq
G S Crawley Esq
R N Evans Esq
D J Felton Esq
D Gillett Esq
M C Hart Esq
D W Keay Esq
D J Slack Esq

No director holds or has any interest in the shares of the Company.

Company Registration number 2613553 (England and Wales)

ROTHER VALLEY RAILWAY LTD

REPORT OF THE DIRECTORS (CONTINUED)

Statement of Directors Responsibilities

The directors are responsible for preparing the Director's Report and the financial statements in accordance with applicable law and regulations.

Company law requires the Directors to prepare financial statements for each financial year. Under that law the Directors have elected to prepare the financial statements in accordance with applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice), including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland". Under company law the Directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing these financial statements, the Directors are required to;

- select suitable accounting policies and then apply them consistently;
- make judgements and accounting estimates that are reasonable and prudent;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The Directors are responsible for keeping proper accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements comply with the Companies Act 2006. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

In preparing this report, the Directors have taken advantage of the small companies exemptions provided by section 415A of the Companies Act 2006.

On behalf of the Board

D J Felton
Director

2nd September 2020



ROTHER VALLEY RAILWAY LTD**PROFIT AND LOSS ACCOUNT**Year Ended 31st December 2019

		2019	2018
	Note	£	£
Turnover	1,2	99,624	99,722
Cost of Sales		-	-
		—	—
Gross Profit		99,624	99,722
Operating & Administrative Expenses		(103,045)	(102,815)
		—	—
(Loss) on ordinary activities before taxation	2	(3,421)	(3,093)
Taxation	3	-	-
		—	—
(Loss) for the financial year on ordinary activities after taxation		(3,421)	(3,093)
		—	—

The notes on pages 8 to 11 form an integral part of the financial statements.

ROTHER VALLEY RAILWAY LTD

BALANCE SHEET

31st December 2019

	Note	2019 £	2018 £
Fixed Assets; Tangible Assets	4	2,888,402	2,607,967
Investment	5	2,000	2,000
		<hr/>	<hr/>
		2,890,402	2,609,967
		<hr/>	<hr/>
Current Assets	6	42,572	50,297
Creditors; amounts due within one year	7	(48,975)	(53,151)
		<hr/>	<hr/>
Net Current (Liabilities)/Assets		(6,403)	(2,854)
		<hr/>	<hr/>
Total assets less current liabilities		2,883,999	2,607,113
		<hr/>	<hr/>
Creditors; amounts due after more than one year;		-	-
Deferred Income	8	2,876,070	2,595,763
		<hr/>	<hr/>
Total Net Assets		7,929	11,350
		<hr/>	<hr/>
Capital and Reserves;			
Called up share capital	9	37,750	37,750
Profit and loss account	10	(29,821)	(26,400)
		<hr/>	<hr/>
Shareholders Funds		7,929	11,350
		<hr/>	<hr/>

The notes on pages 8 to 11 form an integral part of the financial statements.

For the financial year ended 31 December 2019 the company was entitled to exemption from audit under section 477 Companies Act 2006 relating to small companies.

The members have not required the company to obtain an audit of its financial statements for the year in question in accordance with section 476.

The Directors acknowledge their responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of financial statements.

The financial statements have been prepared in accordance with the provisions applicable to companies subject to the small companies' regime and in accordance with the provisions of FRS 102 Section 1A – small entities.

Approved by the Board for issue on 16th September 2020

G S Crawley
Chairman



ROTHER VALLEY RAILWAY LTD

NOTES TO THE FINANCIAL STATEMENTS

Year Ended 31st December 2019

1. Accounting Policies;

1.1 Accounting convention;

The financial statements have been prepared under the historical cost convention unless otherwise specified within these accounting policies and in accordance with Section 1A of the Financial Reporting Standard 102, the Financial Reporting Standard applicable in the UK and the Republic of Ireland and the Companies Act 2006. The company has applied section 35 "Transition to FRS 102" in the current year which caused no accounting adjustments.

1.2 General information;

The principal activity of the company continues to be the reconstruction of the Kent & East Sussex Railway from Bodiam to Robertsbridge in East Sussex. The company is a private limited company which is incorporated and registered in England and Wales (2613553). The registered address of the company is 3-4, Bower Terrace, Tonbridge Road, Maidstone, Kent, ME16 8RY.

1.3 Turnover;

Turnover represents rental income, interest received and revenue grants and donations.

1.4 Revenue Grants and Donations;

Revenue grants and donations are accounted for when received.

1.5 Legacies;

Legacies are accounted for at the date of notification of the income.

1.6 Tangible Fixed Assets and Depreciation;

Tangible fixed assets are stated at cost less depreciation and include enhancement expenditure on assets on loan to the Company.

Depreciation is provided at rates calculated to write off the cost less estimated residual value of each asset over its expected useful life, as follows;

<u>Asset;</u>	<u>Rate per annum;</u>	
Permanent Way	2%	straight line
Buildings & Structures	10%	straight line
Fixtures & Fittings	20%	straight line (10% until 31 December 2012)
Plant & Equipment	25%	straight line
Rolling Stock	5%/10%	straight line

1.7 Capital Grants and Donations;

Capital Grants and Donations received in respect of tangible fixed assets are credited to the profit and loss account over the expected useful economic lives of the relevant assets to which they relate. Capital Grants and Donations received but not yet released to the profit and loss account are included as deferred income in the balance sheet.

2. Profit/(Loss) on Ordinary Activities Before Taxation;

	2019	2018
This is stated after charging;	£	£
Directors emoluments	-	-
Depreciation of tangible assets	81,768	75,903
Loss from disposal of fixed assets	-	1,127

3. Taxation

There is no liability to Corporation Tax for the year (2018: nil).

The Company is a 'close company' as defined by the Income and Corporation Taxes Act 1988.

ROTHER VALLEY RAILWAY LTD

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

Year Ended 31st December 2019

4. Tangible Fixed Assets

	Permanent Way £	Buildings & Structures £	Fixtures & fittings £	Plant & Equipment £	Rolling Stock £	TOTAL £
Cost at 1 Jan 2019	2,787,256	127,453	7,648	10,655	123,220	3,056,232
Additions in year	301,759	-	1,250	77	59,117	362,203
Disposals in year	-	-	(2,290)	(321)	-	(2,611)
Cost at 31 Dec 2019	<u>3,089,015</u>	<u>127,453</u>	<u>6,608</u>	<u>10,411</u>	<u>182,337</u>	<u>3,415,824</u>
Depreciation						
1 Jan 2019	341,392	28,828	6,392	8,927	62,786	448,265
Provision for year	61,790	11,113	637	993	7,235	81,768
On Disposals	-	-	(2,290)	(321)	-	(2,611)
Depreciation 31 Dec 2019	<u>403,182</u>	<u>39,941</u>	<u>4,739</u>	<u>9,599</u>	<u>69,961</u>	<u>527,422</u>
Net Book Value; 31 Dec 2018	<u>2,445,864</u>	<u>98,625</u>	<u>1,256</u>	<u>1,728</u>	<u>60,494</u>	<u>2,607,967</u>
31 Dec 2019	<u>2,685,833</u>	<u>87,512</u>	<u>1,869</u>	<u>812</u>	<u>112,376</u>	<u>2,888,402</u>

Capital expenditure authorised by the Board and contracted for but not completed at 31st December 2019 amounted to £51,178 (2018: £159,315).

Capital expenditure authorised by the Board but not contracted for at 31st December 2019 amounted to £Nil. (2018: £Nil).

	2019 £	2018 £
5. Investment: at cost;		
8 Ordinary shares of £250 each in The 4253 Locomotive Co Ltd	2,000	2,000
	<u> </u>	<u> </u>
6. Current Assets		
Prepayments & Accrued Income	1,077	1,467
Debtors	21,168	15,518
Bank & Cash balances	20,327	33,312
	<u> </u>	<u> </u>
	42,572	50,297
	<u> </u>	<u> </u>
7. Creditors: amounts falling due within one year		
Creditors & Accrued Charges	5,076	4,007
Taxation & Social Security	-	-
Other Creditors	43,899	49,144
	<u> </u>	<u> </u>
	48,975	53,151
	<u> </u>	<u> </u>

ROTHER VALLEY RAILWAY LTD

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

Year Ended 31st December 2019

8. Deferred Income

	2019	2018
	£	£
Deferred Income brought forward	2,595,763	2,415,164
Capital Grants and Donations Received	365,245	265,479
Credited to Profit and Loss Account	(84,938)	(84,880)
	<hr/>	<hr/>
Deferred Income carried forward	2,876,070	2,595,763
	<hr/>	<hr/>

Capital Grants and Donations received in respect of tangible fixed assets are credited to the profit and loss account over the expected useful economic lives of the relevant assets to which they relate. Capital Grants and Donations received but not yet released to the profit and loss account are carried forward as Deferred Income.

9. Share Capital

	2019	2018
	£	£
Authorised;		
Ordinary £1 Shares (Voting)	100	100
'A' Ordinary £1 Shares (Non-voting)	449,900	449,900
	<hr/>	<hr/>
	450,000	450,000
	<hr/>	<hr/>
Allotted, called up and fully paid;		
Ordinary £1 Shares (Voting)	100	100
'A' Ordinary £1 Shares (Non-voting)	37,650	37,650
	<hr/>	<hr/>
	37,750	37,750
	<hr/>	<hr/>

10. Statement of movements on profit and loss account

	Profit & Loss Account £
Balance at 1 st January 2019	(26,400)
Loss for the year	(3,421)
	<hr/>
Balance at 31 st December 2019	(29,821)
	<hr/>

ROTHER VALLEY RAILWAY LTD

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

Year Ended 31st December 2019

11. Related Part Transactions

- a) During the year rent of £1 (2018 - £1) was paid to Rother Valley Railway Heritage Trust.
- b) During the year the Company received Grants of £360,000 from Rother Valley Railway Heritage Trust.
- c) During the year consultancy services of £9,991 (2018 - £18,405) were received from David Gillett Consulting Ltd, a company of which Mr D Gillett is a Director. As at 31 December 2019 £Nil (2018 - £Nil) was unpaid.

12. Parent Company

Rother Valley Railway Heritage Trust is regarded by the directors as being the company's ultimate parent company.

APPENDIX 4

Agriculture Act briefing notes

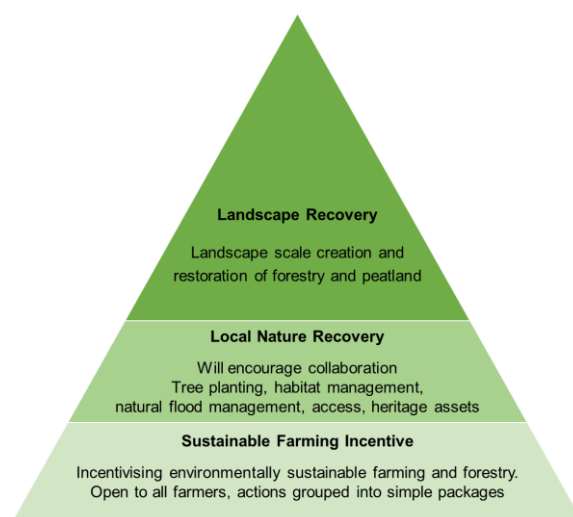
ELM Sustainable Farming Incentive



The Sustainable Farming Incentive (SFI) scheme within Environmental Land Management (ELM) is the component of ELM that should appeal to the largest number of farmers in England (see the hierarchy chart below). Defra has now [published its plans](#) for piloting and launching the scheme; these give farmers their first real indication of how it will be structured and work in practice.

The SFI will support approaches to farm husbandry that help the environment. In addition to benefiting wildlife and the environment, the future schemes will also help farmers, foresters and other land managers play a crucial role in the national effort to tackle climate change, through reducing greenhouse gas emissions and increasing carbon storage. For example Defra calculates that hedgerow management funded by the SFI could store 300,000 tonnes of CO₂ between 2028 and 2032 which is equivalent to taking 130,000 cars off the road.

SFI will pay farmers to manage their land in a more environmentally sustainable way. This might include adopting integrated pest management, and actions to improve soil health or water quality. The ethos at the heart of the SFI is to support the choices of individual farm enterprises in a manner compatible with productive farming. The scheme will comprise a set of standards and farmers will be able to choose which standards they want to apply for and where they want to apply them on their farms, and the level that is right for them.



The standards will be focused on natural assets, which means they will be based on specific features such as soils, grassland, hedgerows, water bodies, and woodland. This approach means that some assets that were “ineligible features” under the Common Agricultural Policy will start to have their value recognised and rewarded. The SFI will also reset Defra’s approach to checking compliance and monitoring agreements - the focus will be on outcomes and improvement, rather than penalising shortcomings.

Key features of the SFI:

- Farmers will be paid for land management actions that contribute towards a ‘standard’
- None of the standards will pay for things that are minimum expectations required by law
- Each standard has been developed based on evidence and practical experience of delivering environmental benefits
- Farmers will be able to choose which standards they want to apply for and to which land parcels they want the standard to apply
- Within each standard there will be three levels for participants to choose from: Introductory, Intermediate and Advanced
- Each level is cumulative: it is more challenging and more rewarding than the previous level, and will deliver greater environmental benefits
- Farmers will select one level per standard
- Farmers will also be able to pick a different level for each standard, to develop an agreement that works for their business.

2021 SFI pilot

The first phase of the pilot will involve several hundred farmers. We understand that from 15 March farmers will be able to express their interest in joining the pilot by completing a simple tick box form. In June 2021 selected farmers will be invited to submit an application. The first phase of the SFI pilot will start in October 2021, it will test a version of the scheme from start to finish. There will be eight standards initially available. In some cases more than one standard can be applied to the same area of land; guidance will be provided to make sure that the activities do not conflict.

Land management plans are intended to be a major feature of future schemes. They will allow farmers to map and record the starting (baseline) condition of their land and plan their future land management activities. A land management plan will not be required for the pilot application, but participants will create one as part of the learning activities within the pilot. The plan is intended to empower farmers, give them more say in how they deliver environmental benefits and demonstrate results. Defra is considering whether farmers should be required to publish some of the information within their land management plan to promote transparency around public spending and build awareness of farmers' environmental activities.

To participate in the pilot the main eligibility criteria are that a farmer must be a Basic Payment Scheme (BPS) claimant, not currently in an agri-environmental scheme on the land parcels to be entered into the pilot, and have management control of the land until late 2024. Entry may also be limited by the fact that the initial set of standards cover only a limited range of farm types (i.e. primarily lowland farms). In later phases of the pilot, a fuller range of standards will be available but it is unclear whether existing pilot participants would be able to add the new standards to their agreements. It would be possible for a participant in the SFI pilot to subsequently apply to join Countryside Stewardship provided that the options selected do not duplicate SFI actions.

In addition to the land management payment rates, pilot participants will receive a pilot participation rate payment to cover the time involved in feeding back to Defra through surveys, interviews, group meetings and workshops. These learning activities are expected to take around 15 hours a month and are essential to test and improve the future scheme. Most of the hours will involve 'thinking while doing' and a smaller proportion would be desk based.

Land management action payment rates

The guidance document suggests that the land management action payment rates are broadly the same as those under Countryside Stewardship. The initial base rates are indicated in the table below; there are also some additional payment rates for additional actions listed in Defra's [guidance](#). Capital items will be available to support all the standards too. The linkages between SFI and Countryside Stewardship or private ecosystem service schemes such as biodiversity net gain remains a matter for review. As Defra's approach to scheme payments evolves, pilot payment rates will be amended to ensure participants are not disadvantaged compared to those who join later.

Standard	Initial base rates (first phase of pilot only)
Arable and horticultural land standard	from £28 up to £74 per hectare
Arable and horticultural soils standard	from £30 up to £59 per hectare
Improved grassland standard	from £27 up to £97 per hectare
Improved grassland soils standard	from £6 up to £8 per hectare
Low and no input grassland standard	from £22 up to £110 per hectare
Hedgerow standard	from £16 up to £24 per 100 metres
On farm woodland standard	£49 per hectare (there is not an intermediate or advanced level)
Waterbody buffering standard	from £16 up to £34 per 100 metres

The standards typically involve between two and seven actions at each level and build upon each other to increase the level of ambition. For example the introductory level of the improved grassland standard aims to protect soils and reduce losses to the environment by requiring farmers to follow a nutrient management plan. The intermediate level requires a nutrient budget to improve nutrient use efficiency, whilst the advanced level requires precision fertiliser and manure applications. Assuming the land and soils standards have a high degree of compatibility, the SFI pilot potentially offers livestock and arable farmers' maximum area based payments of between £105 and £133 per hectare (plus payments for boundary asset management). This potentially means that pilot payments are equivalent to 45-60% of current BPS rates, so in income terms a farmer operating at the advanced level could offset the reduction in their direct payments during the initial years of the agricultural transition. However there will be costs associated with performing the actions required under the SFI so the businesses' net income would still be lower.

SFI launch

Further information about the scheme will be published in summer 2021, ahead of its launch to all farmers eligible for BPS payments in mid-2022, and all farmers in 2024. Over time the scheme will expand as more standards are added, including an animal health and welfare pathway standard. It will also evolve as more innovative approaches like payment by results are developed and seek to offer greater rewards for ambitious actions. Defra is also exploring how partnership working with conservation organisations or accreditation schemes could help assist in delivering the scheme.

The SFI pilot offers interested farmers a chance to help shape the SFI and ensure that it works practically for farmers and rewards their efforts and achievements appropriately. Through this process SFI's potential to significantly improve the environment should increase. There is a reasonable time commitment required; however Defra recognises this and intends to remunerate pilot participants for their time, although rates for these payments are not yet known. Overall the structure planned for SFI looks logical and, combined with the promised flexibility, it appears that SFI should allow farmers to build an environmental agreement that works for them and their land.

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The Agricultural Transition Period

The Path to Sustainable Farming: An Agricultural Transition Plan for England 2021 to 2024

Defra has released [The Path to Sustainable Farming](#), its Agricultural Transition Plan for 2021 – 2024, which builds on previous policy announcements and the legislation within the Agriculture Act to provide further clarity on plans for post Brexit farm support in England.

This is the first time in 50 years that Westminster/England has developed its own system of domestic agricultural support. Coming over two years after the Agricultural Transition period was first announced, the detail in this announcement is a significant step forward. The government has now set out how much BPS Direct Payments will be cut each year between 2021 and 2024, and how this released money will be used through new grants and schemes to help agriculture become more productive and prepare for there being no direct subsidies from 2028. There is more detail on what the Environmental Land Management (ELM) scheme will look like, as well as information on the funding available throughout the transition. Businesses will now be able to plan towards their future, with greater certainty of what lies ahead for England's agricultural sector.

The Agricultural Transition period begins on 1st January 2020 and ends in 2027. In introducing the Plan, Secretary of State George Eustice explained that this transition will not be an overnight revolution, rather an evolution from an old to a new system.

An overview of future schemes

Direct Payments	Environmental and Animal Welfare Outcomes	Improving Farm Prosperity
<ul style="list-style-type: none"> • Direct Payment Reduction • Lump Sum Exit Scheme • Delinking 	<ul style="list-style-type: none"> • Legacy Countryside Stewardship • ELM <ul style="list-style-type: none"> - Sustainable Farming Incentive - Local Nature Recovery - Landscape Recovery • ELM Tests and Trials and National Pilot • Tree Health Scheme (and Pilot) • Farming in Protected Landscapes • Animal Health and Welfare Pathway 	<ul style="list-style-type: none"> • Farming Investment Fund • Research and Development and Innovation • Slurry Investment Scheme • Farm Resilience Support • New Entrants Support Scheme

Direct Payments

The total spend on Direct Payments will be reduced by around 10% in 2021 and 15% in both 2022 and 2023. Defra has now confirmed the reduction rates to be applied to Direct Payments in 2021-24, a banded structure (like income tax) will be used to cut payments meaning that larger payments will be cut more heavily. Savills modelling, based on historic payment data, suggests that 80% of farmers fall in the bottom band as their payments are currently less than £30,000. Relative to their current payments, these farmers will experience cuts of 5% in 2021, 20% in 2022, 35% in 2023 and 50% in 2024.

The average payment reduction for businesses in 2021 will be 5.8%, but payment to 1 in 10 businesses will be cut by 10% or more. Payments to the largest claimants will be cut by almost 25%. For farmers currently receiving over £150,000, the amount of their payment over £150,000 will be cut by 70% by 2024. This is further and faster than had been expected.

If you would like to model the impact on your BPS payment, a copy of the Savills Subsidy Reduction Calculator can be requested [here](#). The progressive phasing out of payments is designed to help farmers manage the transition as smoothly as possible. The money that is taken from Direct Payments will be redirected towards the other schemes outlined below.

Lump Sum Exit Scheme and Delinking

Defra intends to run a Lump Sum Exit Scheme in 2022. This would allow farmers who wish to exit the industry to take their remaining transition period Direct Payments as a capitalised lump sum. The average farm size in England is currently 86ha, with a BPS payment of around £20,000; for such a farm a lump sum payment in 2022 may be in

the region of £54,000, although a discount rate is likely to be applied. The tax treatment of any such lump sum remains unknown.

The Lump Sum Exit Scheme is intended to assist farmers who are thinking about retiring whilst creating opportunities for new entrants into the farming sector. Eligibility for the lump sum is likely to be contingent upon surrendering a tenancy, or letting or selling the farm. There will be a consultation on the government's specific proposals early in 2021. In the context of the tenanted sector, ownership of BPS payment entitlements and security of tenure until 2027 could be relevant factors in determining whether an applicant is eligible. If a tenant uses the exit scheme it may be possible (depending on scheme rules and the availability of spare entitlements) for their landlord to purchase replacement entitlements on the open market in order to claim Direct Payments in 2023-2027. In future the value of BPS entitlements to a buyer is likely to vary according to the size of the buyer's claim, because of larger payments being cut by a higher proportion.

The government also plans to delink Direct Payments from the requirement to occupy land from 2024 onwards. Delinked payments would replace Direct Payments, and a reference period would be used to calculate future payment values. Cross-compliance requirements will continue until delinking takes place, after which a new regulatory regime will be introduced.

Legacy Countryside Stewardship

Defra has long pointed to Countryside Stewardship (CS) as the current scheme for farmers to engage with in order to obtain a smooth transition into ELM, and to ensure farmers already delivering environmental outcomes can access funding. CS will remain open to new applicants until 2023, with the final round of agreements starting in January 2024. After that, all new agreements will be through the three components of ELM.

The Plan outlines new objectives that will be paid for through CS, which include expanding education access to farms, broadening the Catchment Sensitive Farming Scheme, increasing capital grants to tackle air quality issues, bringing woodland creation and woodland maintenance options together, and running a further round of the Facilitation Fund to enable landscape level cooperation between farmers. The government is planning to expand the scope and reduce the red tape around CS. Businesses with Scheduled Monuments on their land are now eligible to apply for Wildlife Offers. Farmers entering agreements from 2021 will be able to break agreements without penalty if they secure a place in ELM or the National Pilot.

Environmental and Animal Welfare Outcomes

Environmental Land Management

ELM will become the focus of future agri-environmental policy. It constitutes three components (the Sustainable Farming Incentive, Local Nature Recovery and Landscape Recovery), and is based upon the principle of paying public money for public goods. Defra has confirmed there will be flexibility around payments and length of agreements to consider individual circumstances. There will also be scope within ELM to blend public and private funding, particularly within the Landscape Recovery component, given its focus on discrete large-scale projects.

Sustainable Farming Incentive

This will be available to all farmers. It will pay them for actions taken to manage their land in an environmentally-sustainable way. Actions will be grouped into simple packages and farmers will be supported to develop a 'whole farm plan' to make their businesses more sustainable. Examples of actions that may be paid for include the management of: cropland, grassland, livestock, woodland, boundaries and hedgerows, soil, nutrients, integrated pest management, efficient water use, wildlife and biodiversity, and the protection of heritage assets – but only where these go further than baseline regulatory requirements. It remains to be seen whether these baselines will be tougher than under cross-compliance.

Local Nature Recovery

Local Nature Recovery will pay for actions that deliver local environmental priorities, making sure the right things are delivered in the right places. The scheme will encourage collaboration between farmers. Defra has suggested that this component may have elements that are competitive. The types of action that will be paid for include creating, managing and restoring woodland, wetlands, freshwater, peatland, heathland, species-rich grassland, and coastal habitat, natural flood management, species management, rights of way, navigation and recreation infrastructure, education infrastructure, events and services, geodiversity and heritage asset management.

Landscape Recovery

Landscape Recovery will support the delivery of landscape and ecosystem recovery through long-term, land use change projects, including projects to restore wilder landscapes, large-scale tree planting and peatland restoration

projects. These projects will deliver a wide variety of environmental outcomes and support local environmental priorities while helping to achieve national targets such as net zero. This component will be competitive.

Test, Trials and National Pilot

Defra is collaborating with farmers in developing ELM, with 3,000 farmers currently involved in 70 tests and trials. There will be new tests and trials starting in 2021. The National Pilot will test all three components of ELM, but with entry dates staggered so lessons learned can be applied for following cohorts. Defra will begin recruiting competitively for the National Pilot from early 2021 and operate on the ground from late 2021 until late 2024. There are spaces for up to 5,500 farmers on these trials.

Tree Health Scheme

This is a new scheme that expands and improves on the CS tree health grants. The range of tree species, pests and diseases that the scheme covers will be broadened as well as the land managers eligible for support. The grant scheme will be tested and piloted, and will come into operation in 2024 when the CS woodland schemes cease.

Farming in Protected Landscapes

Defra is proposing a specific and time limited package to help farmers that work in Protected Landscapes to deliver environmental outcomes, lay the groundwork for ELM and contribute towards the recommendations of the Glover Review for National Landscapes. Funding will be available to support farm level projects that diversify incomes as well as wider infrastructural investment to support rural economies. There will be more information on the scheme in early 2021, farmers who are in Areas of Outstanding Natural Beauty or National Parks are eligible, and it is hoped to support upland farmers in particular.

Animal Health and Welfare

Defra is co-designing an Animal Health and Welfare pathway with industry to encourage the adoption of production systems that meet higher welfare standards for farmed animals. Through the pathway, Defra intends to strengthen the regulatory baseline of our current welfare standards, support livestock farmers where health and welfare enhancements are not sufficiently delivered by the market yet are valued by the public, and improve consumer transparency through labelling. Within the pathway will be health and disease support, which will focus on improving biosecurity, eradicating endemic disease and increasing the health of livestock in order to increase their productivity. Capital grants are also proposed within the animal health and welfare package. Defra is assessing the viability of 'payment by results' within these schemes, however more research is needed. Health and disease support will start in late 2022 or early 2023, and payment by results will be piloted in 2023.

Improving Farm Prosperity

Farm Resilience

Defra realises that the adjustment facing farmers will be challenging. To support these changes and give farmers the support they will require to benefit in the long term, the Farm Resilience package will provide information and tools to help plan the best way forward for their business. This scheme will operate during the first three years of the transition, up to 2024. It will target businesses most affected by the removal of Direct Payments. Farmers will be offered expert advice and support, under the initial phase, £1 million has been invested to work with 1,700 farmers throughout England. This phase ends in March 2021, after which the support will be offered at a larger scale.

Farming Investment Fund for Equipment and Technology and Transformation

The Farming Investment Fund will take over from historic Countryside Productivity Grant schemes. It will incentivise and support the purchase of certain equipment, technology and infrastructure to enable the industry to increase productivity in an environmentally sustainable way. The Transformation Fund will focus on larger investments such as robotic or automated technology, and large-scale precision agricultural equipment. These funds will open in autumn 2021.

Slurry Investment Scheme

To reduce pollution from farming the Slurry Investment Scheme will be offered from 2022. It will help farmers to invest in new slurry stores that exceed current regulatory requirements. New stores must hold at least six months of slurry and have an impermeable cover. As well as the scheme, to mitigate future pollution Defra is planning new regulations which will require all slurry stores to be covered.

Regulatory reform

The Plan also sets out regulatory reform principles, explaining that Defra wants to build trust and confidence in a new regulatory system, providing better advice and support, working in partnership with industry. It also stresses

the importance of creating a coherent way of working and suggests a single regulator to address the fragmentation of multiple Defra bodies. It commits Defra to working in a more joined up way.

In conclusion

This much anticipated Agricultural Transition Plan offers the sector a better indication of what lies ahead, farmers can now budget for 2022-2024 with more certainty and know a little more about future schemes which to date have existed in name only. However, it is not the end of the story, there is a lot of detail yet to be decided and shared, and big questions still to be demystified in how the plethora of policy facing the rural sector will interact to achieve the goals government has committed to. Defra has committed to multiple consultations on the detail behind schemes, so their final form can still be shaped by the farming industry. The upcoming consultations will cover support for new entrants, animal welfare, slurry, delinked payments, lump sum exit scheme, pesticides, dairy contracts, and producer organisations. It is important to remember that anticipated income under ELM will have a similar profit margin as Countryside Stewardship; it should not be treated as a successor to BPS income within farm budgets. Advice should be taken on business investment, restructuring and alternative approaches if this is likely to pose a challenge to business viability.

Timings for the agricultural transition

Theme	Scheme	2021	2022	2023	2024	2025	2026	2027
Environmental and animal welfare outcomes	New Countryside Stewardship agreements and capital grants							
	Tests and Trials							
	Environmental Land Management National Pilots							
	Tree Health Pilot							
	Environmental Land Management – Sustainable Farming Incentive							
	Environmental Land Management – Local Nature Recovery							
	Environmental Land Management – Landscape Recovery							
	Farming in Protected Landscapes							
	Animal health and welfare pathway							
Improving Farm Prosperity	Farming investment fund							
	Research and Development and Innovation							
	Slurry Investment Scheme							
	Farm resilience support							
	New Entrants Support Scheme							
Direct Payments	Direct Payments							
	Lump sum exit scheme (subject to consultation)							
	Delinking							

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APPENDIX 5

OTS report - Simplifying practical,
technical and administrative issues

Capital Gains Tax – second report: Simplifying practical, technical and administrative issues

Capital Gains Tax – second report: Simplifying practical, technical and administrative issues

Presented to Parliament pursuant to
section 186(4)(b) of Finance Act 2016



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Foreword

In July 2020, the Chancellor asked the Office of Tax Simplification (OTS) to carry out a review of Capital Gains Tax, to ‘identify opportunities relating to administrative and technical issues as well as areas where the present rules can distort behaviour or do not meet their policy intent’.¹

The review has attracted very strong engagement from advisers, businesses, academics and the general public, supported by an extensive range of meetings with interested parties with a wide variety of perspectives.

Given the wide scope of the review, the OTS has produced two reports. The first report *Simplifying by design* was published in November 2020 and considered the policy design and principles underpinning the tax.²

This second report considers a range of key practical, technical and administrative issues, on the basis of the present policy design principles of Capital Gains Tax.

The report covers a range of areas from moving home to getting divorced, running or investing in a business, or in relation to particular issues affecting land transactions. It also highlights a broader concern about the low level of public awareness of the tax, and the extent to which the administrative systems could do much more to support taxpayers.

The OTS would like to thank Mark Pickard, who led the review, supported by Charlotte Alderman, Sally Campbell, Sarah Glover, Suzanne Green (kindly seconded to the OTS by PwC), Julia Neate and Hannah Smith, guided by OTS Head of Office David Halsey. We are also very grateful to our HM Treasury and HM Revenue & Customs colleagues, our Consultative Committee members and all those who have willingly given time, ideas, challenge and support.



Kathryn Cearns – OTS Chair



Bill Dodwell – OTS Tax Director

¹ <https://www.gov.uk/government/publications/chancellor-requests-ots-review-of-capital-gains-tax>

² OTS Capital Gains Tax Review: Simplifying by design.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935073/Capital_Gains_Tax_stage_1_report_-_Nov_2020_-_web_copy.pdf

Executive summary

Introduction

The Office of Tax Simplification (OTS) is the independent adviser to government on simplifying the tax system. The work of the OTS is rooted in improving the experience of all who interact with the tax system. The OTS aims to improve the administrative processes, which is what people actually encounter in practice, as well as simplifying the rules. These are often of equal importance to taxpayers and HM Revenue & Customs (HMRC).

In July 2020, the Chancellor asked the OTS to carry out a review of Capital Gains Tax (see Annex A), to ‘identify opportunities relating to administrative and technical issues as well as areas where the present rules can distort behaviour or do not meet their policy intent’.

In its wide-ranging consultation, the OTS received valuable contributions from representative bodies, professional advisers, businesses, academics and from the Consultative Committee (see Annex B), through 54 consultation meetings, 180 formal written responses to the call for evidence and almost 1,200 members of the public contributing to an online survey. A list of organisations consulted, or which responded to the call for evidence, is in Annex C.

Scope of the review

Given the wide scope of the review, the OTS has produced two reports.

The first report *Simplifying by design* was published in November 2020 and considered the policy design and principles underpinning the tax.¹

This second report considers practical, technical and administrative issues, based on the present policy design principles of Capital Gains Tax. Given the nature of transactions to which Capital Gains Tax applies, the report also touches in some places on interconnections with other taxes such as Stamp Duty Land Tax and Inheritance Tax.

The report does not cover partnerships, trusts, estates in administration, non-UK residence, non-UK domicile or complex international issues. While each of these can be a source of complexity, they are areas where the issues involved go much wider than Capital Gains Tax and could be the subject of a separate review.

¹ OTS Capital Gains Tax Review: Simplifying by design.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935073/Capital_Gains_Tax_stage_1_report_-_Nov_2020_-_web_copy.pdf

In keeping with the focus on individuals and smaller businesses, this review did not extend to issues specific to corporate groups, such as the substantial shareholding exemption, company reorganisations or demergers.

Awareness

A persistent theme running through many of the responses the OTS received to the Call for Evidence is that many people have limited awareness or understanding of Capital Gains Tax, of when it may arise, or of their reporting and paying obligations when it does.

This means that it is particularly important for the technical and administrative rules, as well as HMRC's guidance and processes, to be as intuitive as possible. It is equally important that the rules and guidance are updated where necessary so that they remain in tune with the way people live today rather than when Capital Gains Tax was introduced in 1965.

Recommendations

This report makes 14 recommendations (see page 14) across a wide range of areas covered in the body of the report, including moving home, getting divorced, and running or investing in a business.

Here, in the executive summary, the recommendations are grouped by reference to the OTS strategic principles:

- three recommendations that tackle difficult areas to make a difference over the longer term,
- four standalone recommendations,
- six additional recommendations affecting significant numbers of people

There is then a broader guidance recommendation, highlighting eight specific areas where the OTS considers that HMRC guidance needs to be improved.

Making a difference over the longer term

The first three recommendations address issues where the OTS sees an opportunity for the government and HMRC to tackle difficult issues which will make a significant difference over the longer term.

Personal Tax Account and Single Customer Account

Over 19 million taxpayers have signed up for their Personal Tax Account,² which will ultimately be replaced by the Single Customer Account.

The OTS is encouraged that a Single Customer Account for all taxpayers that is easily accessible and secure is a key component of the government's vision.³

² Overview of HMRC's annual report and accounts 2018 to 2019.

<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2018-to-2019/overview-of-hmrcs-annual-report-and-accounts-2018-to-2019>

³ Building a trusted, modern tax administration system.

<https://www.gov.uk/government/publications/tax-administration-strategy/building-a-trusted-modern-tax-administration-system>

As the OTS explored in its Reporting and Payment Review, an online digital platform is a modern way for a taxpayer to report income to HMRC and receive information about their tax affairs from the tax authority.⁴ However, it is not clear at what stage Capital Gains Tax will be included in this ambitious program.

HMRC should integrate the different ways of reporting and paying Capital Gains Tax into the Single Customer Account, making it a central hub for reporting and storing Capital Gains Tax data (recommendation 1).

There are three main ways of reporting a capital gain – through Self Assessment, the UK Property tax return, and the ‘real time’ Capital Gains Tax service.

The OTS recommends changes to each of these but the overarching recommendation is that these should be brought together in the Single Customer Account. This could ease the administrative burden for all of the 500,000 or so people who file returns of disposals in any given year.⁵

This modern and fully integrated Single Customer Account would log relevant information for the taxpayer and act as a gateway to pay the tax in the most appropriate way. Agents should have access to the information in it, with the taxpayer’s approval.

It would be a central hub to claim and keep track of Capital Gains Tax information, such as capital losses, main residence nominations and enterprise investments, so it is relevant for many of the other recommendations in this report. It would also help those who struggle to pay, by making it easier to be aware of what tax may have to be paid.

This will require sustained investment over a number of years, building on the £68 million committed for the Single Customer Account and Single Customer Record in Budget 2021.⁶

Private Residence Relief nominations

Private Residence Relief is estimated to benefit 1.5 to 2 million homeowners annually and to have cost the Exchequer £25 billion in tax year 2019-20.⁷ It is intended to relieve main homes from the scope of Capital Gains Tax, so generally only one property can be covered at a time.

⁴ Tax reporting and payment: Simplifying tax for self-employed people and residential landlords https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843531/OTS_Tax_reporting_and_payment_review.pdf Tax reporting and payment: Simplifying tax for self-employed people and residential landlords. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843531/OTS_Tax_reporting_and_payment_review.pdf

⁵ HMRC have advised the OTS that approximately 500,000 individuals submitted a Capital Gains Tax filing for the tax year 2017-18. This is higher than the number of taxpayers liable to Capital Gains Tax in that year (265,000) because it includes individuals with no liability, such as those claiming to offset a loss and those reporting transactions where the proceeds exceed the reporting threshold of four times the value of the Annual Exempt Amount.

⁶ FST speech to HMRC virtual stakeholder conference. <https://www.gov.uk/government/speeches/speech-to-hmrc-virtual-stakeholder-conference>

⁷ Non-structural tax reliefs. See Annex D. <https://www.gov.uk/government/statistics/main-tax-expenditures-and-structural-reliefs>

Where a taxpayer (and their spouse) have more than one eligible home, they can choose which home they wish to benefit from the relief by making a nomination to HMRC within 2 years of acquiring or disposing of an additional home. If no nomination is made they must decide which is in fact their main home, based on a number of factors such as how long they spend there or where their family lives.

There is no realistic alternative to a process involving nominations. To remove them and require all homeowners with more than one home to decide which of their homes is their main home based on the facts would be challenging both for homeowners and for HMRC.

The nomination system favours those who are better informed or professionally advised as they are more likely to be aware that they have an option to nominate and so less likely to miss deadlines. It is also peculiar that taxpayers have to consider nominations when only renting rather than owning their second home, so that no capital gain can arise.

The government should review the practical operation of Private Residence Relief nominations, raise awareness of how the single rules operate, and in time enable nominations to be captured through the Single Customer Account (recommendation 6).

Any change should aim to create more parity between individuals who have a tax adviser and those who do not receive professional advice – which could be achieved through either advancing awareness around nominations or allowing nominations to be made on disposal.

One way of increasing awareness would be for the government to require estate agents and conveyancers to distribute information to purchasers of a new home. This information could include HMRC guidance on potential tax charges, nominations and administration requirements such as the UK Property tax return. The theme of raising awareness is considered again later in this report and this recommendation should be considered alongside recommendation 3.

Removing the need to consider short term rentals will remove the need for all those renting second homes from having to make a nomination. The definition of short term rentals could be aligned with the existing definition used in the legislation to remove the time limit for making nominations in relation to such properties, which would include assured shorthold tenancies but not leases with any capital value.

These changes to nominations would ideally be supported through the new Single Customer Account.

Deferred proceeds: Capital Gains Tax when a business is sold

The proceeds from the sale of a business or land can be received in several different ways.

Sometimes the proceeds of a sale might be paid over a number of years, or the proceeds could be a combination of cash and other assets such as shares. In addition, a business can be sold for an uncertain price that depends on future events.

The OTS has heard some of these more complex types of business and land sales can create several different practical issues. These include that they are difficult for

ordinary taxpayers to understand, they can result in upfront tax on cash that has not yet been received, and the differences in tax treatment can distort commercial decision making.

The government should consider whether Capital Gains Tax should be paid at the time the cash is received in situations where proceeds are deferred, such as on the sale of a business or land, while preserving eligibility to existing reliefs (recommendation 8).

Although it may only affect a relatively small number of taxpayers the economic effect is likely to be more significant due to the entrepreneurial nature of the individuals and businesses affected.

The government would have to consider whether there are wider situations where similar treatment should apply and give thought to practical compliance issues (such as those related to an individual becoming non-UK resident) to minimise any unintended consequences.

The government should also consider ensuring that future proceeds payable in forms other than cash (such as corporate bonds) could qualify for Business Asset Disposal Relief.

Standalone recommendations

The next four recommendations are standalone measures where it may be possible to deliver practical benefits for taxpayers through discrete and relatively uncontroversial changes.

Share pooling

Share holdings of a particular type are normally grouped together or 'pooled' as a whole for Capital Gains Tax purposes when they are sold.

This usually operates as a simplification measure which means taxpayers do not have to keep track of which of their identical assets they have sold. However it can result in greater complexity in some situations, such as where an individual has more than one investment manager.

The government should consider whether individuals holding the same share or unit in more than one portfolio should be treated as holding them in separate pools (recommendation 4).

This will relieve the relatively small number of individuals with more than one investment manager from having to perform calculations based on the interpretation of a complex range of financial statements and help to facilitate better use of third-party data.

Private Residence Relief and garden developments

The OTS considers that the scope of Private Residence Relief is generally fit for purpose and adequately supports its policy objective.

However, the rules on use of gardens can produce unexpected and distortionary outcomes. For instance, homeowners who sell their garden to a developer can usually receive full Private Residence Relief on the sale. However, homeowners who choose to split their own land, and build a new home for themselves to move into,

may not receive full Private Residence Relief on the new home in relation to the period before the house was built.

The government should consider adjusting Private Residence Relief to cover developments in a taxpayer's garden which the taxpayer subsequently occupies (recommendation 5).

This would make self builds, which are not uncommon, more tax-neutral.

Divorce and Separation

Married couples or civil partners can transfer assets between each other without triggering an immediate Capital Gains Tax charge. The transfers are made on a 'no gain no loss' basis, which means that the base cost of the asset transferred from the previous owner is inherited by the new owner.

Divorcing or separating couples continue to get the same treatment as married couples in this respect in the tax year of their separation. However, from the following tax year transfers take place at market value in accordance with the normal Capital Gains Tax rules.

All the respondents to the OTS Call for Evidence who considered this issue agreed that the length of time given to separating couples was inadequate - the average time between applying for and securing a divorce in England and Wales in 2020 being 53 weeks.⁸

The government should extend the 'no gain no loss' window on separation to the later of:

- the end of the tax year at least two years after the separation event
- any reasonable time set for the transfer of assets in accordance with a financial agreement approved by a court or equivalent processes in Scotland (recommendation 7)

This recommendation may only impact a small percentage of separating couples but is nonetheless important. It is unrealistic to expect separating couples to have resolved their affairs by the end of the tax year of their separation, in part because financial agreements are relevant for a third of divorces,⁹ and it is unfair to those without tax advisers.

Debts

One type of company debt is a known as a corporate bond. It is likely that a significant proportion of the 43,300 medium and large companies use corporate bonds.¹⁰

⁸ Family Court Statistics Quarterly: October to December 2020.

<https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2020/family-court-statistics-quarterly-october-to-december-2020>

⁹ Law Society Call for Evidence response.

¹⁰ Figure represents businesses with 50 or more employees.

<https://www.gov.uk/government/statistics/business-population-estimates-2019/business-population-estimates-for-the-uk-and-regions-2019-statistical-release-html>

When a company is sold it is possible to defer the tax on any part of the proceeds received in the form of a corporate bond until the corporate bond is repaid.

How the corporate bond is treated for Capital Gains Tax purposes is effectively a choice determined by the absence or inclusion of specific terms in the loan documentation which generally have no other commercial significance.

The government should consider enabling an irrevocable provision in the documentation for a corporate bond to specify that it is subject to Capital Gains Tax, and for the absence of such a provision to mean that it is exempt (recommendation 9).

This would remove the need for confusing and complex clauses to be included in loan documentation, purely for tax purposes.

Additional Recommendations

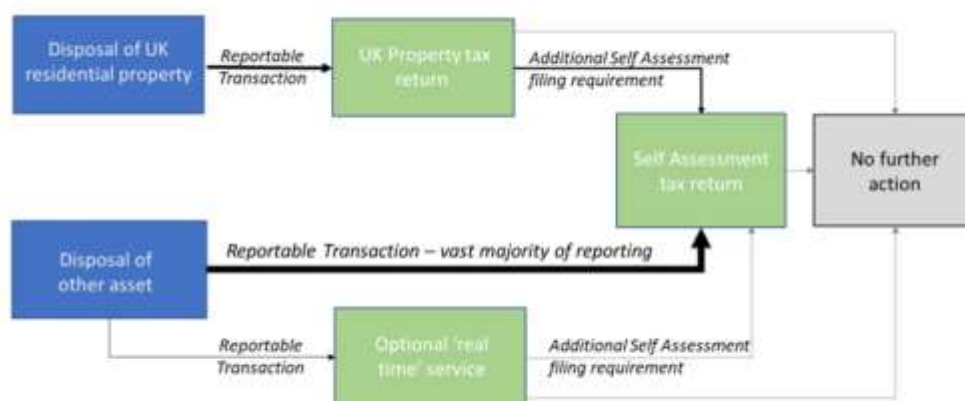
Reporting and paying Capital Gains Tax

There are currently several different ways UK resident individuals report Capital Gains Tax transactions to HMRC. In some cases, this involves disposals being reported more than once.

1. The most common way to report a disposal is through **Self Assessment**
2. The next most common way to report a gain is via the **UK Property tax return**
3. A very small minority of people choose to report gains early through the 'real time' **Capital Gains Tax service**

The interaction between different ways of reporting disposals is illustrated in a simplified way below.

Diagram A: Diagram showing different ways of reporting capital disposals



Source: OTS

The OTS considers that the 'real time' Capital Gains Tax service has room for improvement. Although voluntary the very low number of people using it - only 1,670 in tax year 2018-19¹¹ - is disappointing in the context of HMRC's long-term

¹¹ 1,670 taxpayers used it to report disposals of assets other than residential property. See Annex D.

aspiration to reduce the number of taxpayers needing to complete a Self Assessment tax return.¹²

The government should formalise the administrative arrangements for the 'real time' Capital Gains Tax service, effectively making it into a standalone Capital Gains Tax return that is usable by agents (recommendation 2).

It would then be governed by defined rules, with clear enquiry and filing deadlines. The scope of the service should also be expanded to include agents.

This change could facilitate earlier payment by more of the 250,000¹³ or so taxpayers who pay Capital Gains Tax each year, and in doing so it would save them time and improve their tax reporting and paying experience.

UK Property tax return

The requirement to report taxable gains on a UK residential property disposal within 30 days is a very ambitious target for many taxpayers – as indicated by the fact that a third of the initial returns received took longer than 30 days to arrive.¹⁴ This concern was also reflected in the overwhelmingly negative response that this policy received in the Call for Evidence.

Many taxpayers only find out about their obligations after they have sold their property. But even with adequate awareness and preparation the OTS considers that 30 days is still a challenging deadline.

The government should consider extending the reporting and payment deadline for the UK Property tax return to 60 days, or mandate estate agents or conveyancers to distribute HMRC provided information to clients about these requirements (recommendation 3).

Either approach would give the approximately 150,000 individuals who report a disposal of a residential property in a typical year¹⁵ more time to consider whether they have a taxable gain, and for the 85,000 of those who do have a taxable gain to file a UK Property tax return. The former approach would simply create a longer window, and the latter more subtly by making taxpayers aware of their obligations earlier on and so giving them more time to prepare in advance of the sale.

The predicted cash flow effect on the Exchequer in the 2021-22 tax year of extending the deadline to 60 days is estimated to be approximately £105 million. The cost would come down significantly in subsequent tax years, and this figure needs to be considered in the context of the £935 million that this policy change raised in tax year 2020-21.¹⁶

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/413975/making-tax-easier.pdf

¹³ Average 254,000 individual taxpayers over four tax years from 2015-16 to 2018-19
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908647/Table_1.pdf

¹⁴ HMRC data 6 April 2020 – 6 January 2021. See Annex D.

¹⁵ HMRC have advised the OTS that approximately 85,000 individuals paid Capital Gains Tax on a disposal of residential property for tax year 2018-19 (out of 150,000 reporting a disposal of residential property).

¹⁶ HMRC data 2020-21 & 2021-22. See Annex D.

Enterprise investment schemes

The Enterprise Investment Scheme together with the Seed Enterprise Investment Scheme are intended to provide financial support for growth investment in start-up and early-stage companies. Over 40,000 taxpayers use an enterprise investment scheme every year.¹⁷

Both reliefs have restrictive eligibility criteria which requires specific clearance from HMRC but provide a complete exemption from Capital Gains Tax as well as upfront Income Tax relief.

The OTS has heard from several respondents to the Call for Evidence that the rules are overly limiting or cause practical problems for genuine applicants.

The OTS has also identified a number of specific areas that regularly cause practical concern which if addressed could better enable the relief to achieve its policy objectives. These include the short deadlines for issuing shares, the interaction with Business Asset Disposal Relief, the potential for abuse with low value investments, a cumbersome application process, and the link between eligibility for Capital Gains Tax and Income Tax.

The government should review the rules for enterprise investment schemes, with a view to ensuring that procedural or administrative issues do not prevent their practical operation (recommendation 10).

There is evidence to suggest that tax incentives for venture capital investment generates a number of positive macroeconomic benefits¹⁸ and business investment will be all the more important as the economy recovers from the effects of COVID-19.

These changes could remove a range of anomalies that can currently frustrate the uptake of these schemes and so facilitate more financial support for start-up and early-stage companies.

Equally, the government should continue to monitor whether the reliefs are being used for investments that are not in keeping with their original intention.

Foreign assets

When foreign assets are bought or sold their costs and proceeds are converted into sterling when they are incurred or received in order to calculate the gain. This means that their absolute gains or losses in the foreign currency are ignored for Capital Gains Tax purposes.

This approach can be complicated as it requires historical exchange rate conversions of both the acquisition cost and any enhancement expenditure.

¹⁷ EIS statistical data, Tables 8.5 and 8.15.

<https://www.gov.uk/government/statistics/enterprise-investment-scheme-seed-enterprise-investment-scheme-and-social-investment-tax-relief-statistics-may-2020>

¹⁸ Effectiveness of tax incentives for venture capital and business angels to foster the investment of SMEs and start-ups 2017, PricewaterhouseCoopers LLP, Center for Social and Economic Research, & Institute for Advanced Studies, produced for the European Commission, p9.

https://ec.europa.eu/taxation_customs/sites/taxation/files/final_report_2017_taxud_venture-capital_business-angels.pdf

The government should consider whether gains or losses on foreign assets should be calculated in the relevant foreign currency and then converted into sterling (recommendation 11).

This would be simpler for those taxpayers who operate foreign bank accounts and more intuitive for those regularly buying and selling assets in foreign currencies, though the government would also have to consider the implications for those who operate mainly in sterling.

HMRC information indicates that one in ten UK taxpayers have an offshore financial interest so this recommendation has wide relevance.¹⁹

Rollover Relief in compulsory purchase situations

Although owners of 'let' land are not normally eligible to claim rollover relief on its sale, special rules allow for such a claim where the let land has been compulsorily purchased.

However, there are restrictions around such claims which the OTS understands present particular challenges for owners of farming land.

For example, it is hard to see the economic rationale for restricting Rollover Relief reinvestment to a 'like for like' basis if a more commercially rational decision would be to buy new agricultural buildings rather than replacement land. Acquiring replacement neighbouring land may also be very difficult due to an increasingly thin land market.

There are also a number of technical problems with Rollover Relief in compulsory purchase situations, around for example, time limits, provisional claims, and willingness to sell.

The government should expand the specific rollover relief rules which apply where land and buildings are acquired under Compulsory Purchase Orders (recommendation 12).

This issue is expected to grow over coming years. The total number of compulsory purchases is unknown but 50,000 compulsory purchase notices are expected to be issued between 2017 and 2023 in relation to Phase One of the High Speed 2 programme alone.²⁰ Many of these will relate to owners of agricultural land.

Expanding the relief may free up owners of agricultural land to reinvest in more economically efficient improvements.

The OTS is mindful that there may also be parallels with the way other sectors or ownership models operate so any solution could apply more widely than to agricultural landowners.

¹⁹ No Safe Havens 2019: responding appropriately.

<https://www.gov.uk/government/publications/no-safe-havens-2019/no-safe-havens-2019-responding-appropriately>

²⁰ Investigation into land and property acquisition for Phase One (London – West Midlands) of the High Speed 2 programme, National Audit Office, p4. <https://www.nao.org.uk/wp-content/uploads/2018/09/Investigation-into-land-and-property-acquisition-for-the-Phase-One-Full-report.pdf>

Flat Management Companies

Leases are a form of time-limited property ownership where ultimate control of the property is shared with, and limited by, the person holding the underlying freehold interest in the property.

Ministry of Housing, Communities and Local Government statistics indicate there were about 4.5 million residential leasehold properties in England in the 2018-19 financial year, of which 69% - around 3.1 million - were flats.²¹

Many freeholds are owned by third parties, but some are owned by a company owned by the leaseholders of flats in the building. These leaseholders are often described as owning a share of the freehold.

If a leaseholder owns the freehold and extends their own lease, they could be faced with a tax charge on their own lease extension even where no payment is made for that extension.

The government should consider exploring ways of removing inappropriate Corporation Tax or Capital Gains Tax charges where a freeholder is in effect only extending their own lease (recommendation 13).

While the majority of leaseholders are unlikely to be affected, as they have either extended their lease already or do not own a share of the freehold, resolving this could save the minority who are affected significant amounts of Corporation Tax.

HMRC Guidance

Finally, the report makes a number of practical and positive suggestions about how HMRC could boost awareness and understanding through improved guidance in order to provide a better experience for taxpayers. These suggestions are woven into the relevant chapters and support several of the recommendations above.

HMRC should improve their guidance in the following specific areas (recommendation 14):

- the UK Property tax return
- lodgers and people working from home
- when a debt is a debt on a security
- when a loan to a business becomes irrecoverable
- when Business Asset Disposal Relief could apply to farmers or others looking to retire over a period of time
- enterprise investment schemes
- land assembly arrangements
- flat management companies

²¹ Leasehold and commonhold reform: Trends in leasehold tenure.
<https://commonslibrary.parliament.uk/research-briefings/cbp-8047/>

List of Recommendations

Awareness and Administration (Chapter 1)

- 1 HMRC should integrate the different ways of reporting and paying Capital Gains Tax into the Single Customer Account, making it a central hub for reporting and storing Capital Gains Tax data.
- 2 The government should formalise the administrative arrangements for the 'real time' Capital Gains Tax service, effectively making it a standalone Capital Gains Tax return that is usable by agents.
- 3 The government should consider extending the reporting and payment deadline for the UK Property tax return to 60 days, or mandate estate agents or conveyancers to distribute HMRC provided information to clients about these requirements.
- 4 The government should consider whether individuals holding the same share or unit in more than one portfolio should be treated as holding them in separate share pools.

Main homes (Chapter 2)

- 5 The government should consider adjusting Private Residence Relief to cover developments in a taxpayer's garden which the taxpayer subsequently occupies.
- 6 The government should review the practical operation of Private Residence Relief nominations, raise awareness of how the rules operate, and in time enable nominations to be captured through the Single Customer Account.

Divorce and separation (Chapter 4)

- 7 The government should extend the 'no gains no loss' window on separation to the later of:
 - the end of the tax year at least two years after the separation event
 - any reasonable time set for the transfer of assets in accordance with a financial agreement approved by a court or equivalent processes in Scotland.

Business issues (Chapter 5)

- 8 The government should consider whether Capital Gains Tax should be paid at the time the cash is received in situations where proceeds are deferred such as on the sale of a business or land, while preserving eligibility to existing reliefs.
- 9 The government should consider enabling an irrevocable provision in the documentation for a corporate bond to specify that it is subject to Capital Gains Tax, and for the absence of such a provision to mean that it is exempt.

Investor issues (Chapter 6)

- 10 The government should review the rules for enterprise investment schemes, with a view to ensuring that procedural or administrative issues do not prevent their practical operation.
- 11 The government should consider whether gains or losses on foreign assets should be calculated in the relevant foreign currency and then converted into sterling.

Land and property issues (Chapter 7)

- 12 The government should expand the specific Rollover Relief rules which apply where land and buildings are acquired under Compulsory Purchase Orders.
- 13 The government should consider exploring ways of removing inappropriate Corporation Tax or Capital Gains Tax charges where a freeholder is in effect only extending their own lease.

HMRC guidance

- 14 HMRC should improve their guidance in the following specific areas:
 - the UK Property tax return (para 1.101)
 - lodgers and people working from home (para 2.114)
 - when a debt is a debt on a security (para 5.80)
 - when a loan to a business becomes irrecoverable (para 5.81)
 - when Business Asset Disposal Relief could apply to farmers or others looking to retire over a period of time (para 5.88)
 - enterprise investment schemes (para 6.41)
 - land assembly arrangements (para 7.87)
 - flat management companies (para 7.118)

Chapter 1

Awareness & Administration

Awareness

- 1.1 A persistent theme running through many of the responses the OTS has received to the Call for Evidence is that many people have limited awareness or understanding of Capital Gains Tax, of when it may arise, or of their reporting and paying obligations where it does.
- 1.2 None of this absolves taxpayers from their responsibility to pay tax. But it does mean that it would be particularly helpful if the technical and administrative rules, and the supporting HMRC guidance and processes, were as intuitive as possible. Alongside this it is important that the rules and guidance are regularly updated so that they remain in tune with the way people live.
- 1.3 This report highlights several areas where more could possibly be done to raise awareness and makes a number of practical suggestions about how HMRC could help taxpayers to meet their Capital Gains Tax obligations.

Levels of awareness

- 1.4 Two particular reasons for the generally low levels of awareness are that:
 - the tax affects relatively few people every year - in tax year 2017-18¹ only 265,000 people paid Capital Gains Tax in contrast with the 31 million people who paid Income Tax²
 - those who do pay Capital Gains Tax do so infrequently - over 70% of all those who paid Capital Gains Tax in the eleven tax years to 2017-18 did so only once in that period³
- 1.5 However, the tax impacts many more people than these figures might suggest.
- 1.6 Over the period of eleven tax years from 2007-08 to 2017-18, a total of 1.5 million different individual taxpayers reported taxable gains (in excess of amounts covered by the Annual Exempt Amount). But many more people

¹ HMRC Capital Gains Tax statistical tables. See Annex D.

² HMRC's Income Tax liabilities statistics tables, Table 2.1:
<https://www.gov.uk/government/statistics/income-tax-liabilities-statistics-tax-year-2017-to-2018-to-tax-year-2020-to-2021>.

³ HMRC CGT statistics 2017/18. This information is included and explained in the OTS's first report on Capital Gains Tax: <https://www.gov.uk/government/publications/ots-capital-gains-tax-review-simplifying-by-design>.

are required to interact annually with Capital Gains Tax than the number of those who actually pay it - in tax year 2017-18 over 500,000 returns were made.⁴

- 1.7 Many of those affected do not have high incomes – over half of them paid no Income Tax or did so only at the basic rate in tax year 2017-18.⁵ In addition, as the OTS's first report on Capital Gains Tax explored, Capital Gains Tax tends to affect taxpayers on a one-off basis so they do not readily pick up the knowledge and experience that comes from dealing with something regularly.⁶
- 1.8 Also, unlike Stamp Duty Land Tax (another tax people typically engage with on a one-off basis), many Capital Gains Tax payers interact directly with HMRC rather than it being very common to rely on an intermediary such as a tax agent or lawyer.

Professional advisers

- 1.9 Professional advisers play an important role in helping taxpayers to meet their tax obligations and are engaged by about three quarters of those who pay Capital Gains Tax.⁷ Responses to the OTS online survey suggest that people quite often engage an agent to help them with Capital Gains Tax because they have limited understanding of the rules and lack confidence in the support offered by HMRC.

HMRC awareness strategy

- 1.10 Investing in providing help and guidance and so increasing levels of awareness is central to any attempt to improve tax administration. It may increase administration costs in the short term but will reduce compliance costs both for taxpayer and HMRC over the long term. Greater public awareness is also valuable in itself to improve and maintain confidence in the integrity of the system.
- 1.11 HMRC's commitment to investing in raising awareness of Capital Gains Tax rules is evident through their newsletters, post Budget updates, Twitter, agent working groups, and webinars. They also provide fliers for specific professional groups to hand out, such as for non-residents disposing of UK residential property. In addition, HMRC maintain over 60 pages of guidance on GOV.UK and support many more pages of detailed technical guidance.⁸
- 1.12 The OTS welcomes this commitment and in this report suggests ways for developing and improving things still further in this area.

⁴ See note 5 on page 6: HMRC have advised that approximately 500,000 individuals submitted a Capital Gains Tax filing for the tax year 2017-18.

⁵ HMRC's Capital Gains Tax statistical tables, Table 3 (151,000 out of 265,000 had taxable income of between £0 and £32,000). See Annex D.

⁶ Although there are a few people who make gains every year, in an 11-year sample period 72% of taxpayers paid only once.

⁷ HMRC have advised that approximately 74% of individual taxpayers who reported a Capital Gains Tax liability for tax year 2018-19 included details of an agent in their Self Assessment tax return.

⁸ HMRC Capital Gains Tax manual

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual>

Awareness in the context of other OTS reports

- 1.13 This lack of awareness of Capital Gains Tax chimes with what the OTS found in its *Taxation and Life Events* report. Despite the range of accessible and engaging 'Tax Facts' material HMRC has produced for schools, and HMRC deterrence campaigns, it seems that the level of knowledge and awareness about tax matters is lower than it is widely felt would be desirable.⁹
- 1.14 In addition, a recent YouGov survey commissioned by Deloitte on the Tax Education Gap confirmed that tax knowledge is important, as tax affects so many economic and family choices¹⁰ and without it people may not understand the implications of particular decisions.
- 1.15 Tax knowledge also has an impact on the tax gap (the difference between the amount of tax that should be paid, and what is actually paid). Addressing this wider issue could give HMRC greater ability to tackle evasion and avoidance and reduce the level of unintended error.
- 1.16 The recommendations in the *Taxation and Life Events* report are also relevant here:
- HMRC should collaborate more with relevant external bodies, including schools and in further and higher education, seeking to improve the public's understanding of tax and finance, when seeking to extend the reach of their own tax education materials
 - HMRC should extend their collaboration with academic researchers to quantify the effect of HMRC's tax education programme and explore the potential for a cost/benefit measure to allow HMRC to prioritise and target their tax education resources¹¹

HMRC guidance

- 1.17 As noted in paragraph 1.2, it is important for HMRC guidance to be regularly updated. The OTS has identified a number of specific areas where the Capital Gains Tax rules are particularly complex and where responses to the Call for Evidence show that expanded or clearer HMRC guidance would be welcome. These areas are listed below and considered in more detail elsewhere in the report as indicated.

Recommendation 14

The OTS has identified the following specific areas where HMRC could improve their guidance:

- the UK Property Tax return (para 1.101)

⁹ Taxation and Life Events: Simplifying tax for individuals, OTS, p14.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/838130/Taxation_and_life_events_Oct_2019.pdf.

¹⁰ The Tax Education Gap – is it time to talk tax?, Deloitte, p1.

<https://www2.deloitte.com/uk/en/pages/tax/articles/tax-education-gap.html/>.

¹¹ Taxation and Life Events: Simplifying tax for individuals, OTS, p14.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/838130/Taxation_and_life_events_Oct_2019.pdf.

- lodgers and people working from home (para 2.114)
- when a debt is a debt on a security (para 5.80)
- when a loan to a business becomes irrecoverable (para 5.81)
- when Business Asset Disposal Relief could apply to farmers or others looking to retire over a period of time (para 5.88)
- enterprise investment schemes (para 6.41)
- land assembly arrangements (para 7.87)
- flat management companies (para 7.118)

Administration

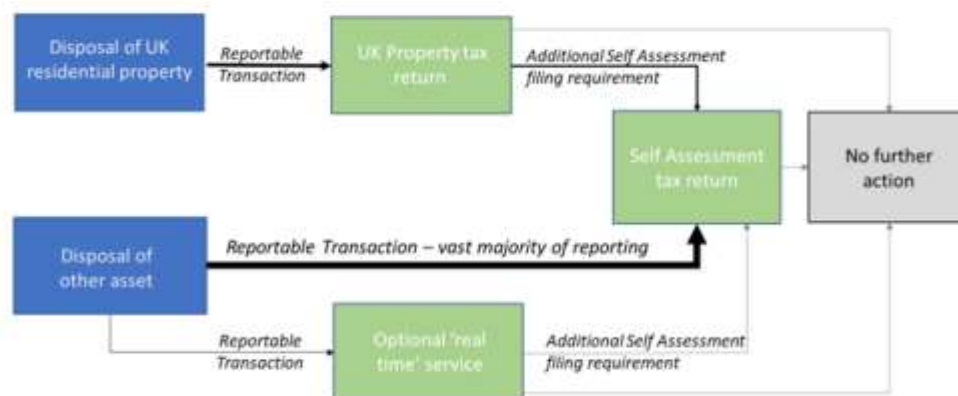
Reporting and paying Capital Gains Tax

- 1.18 There are currently several different ways taxpayers can report capital disposals to HMRC. In some cases, the same disposal must be reported more than once. As many individuals make capital disposals infrequently, they may only make a report once in, say, a 10 year period.
- 1.19 The most common way to report disposals is through the main **Self Assessment tax return** on the Capital Gains Tax supplementary pages (SA108).
- 1.20 An individual will need to include details of their capital disposals on a Self Assessment tax return if the total gains arising are above the Annual Exempt Amount, or if the proceeds received are more than four times the Annual Exempt Amount.
- 1.21 If an individual has Capital Gains Tax to pay and has not been issued with a Self Assessment tax return (and the tax has not been paid in full under either of the other two options outlined below), then they must notify HMRC by 5 October following the end of the tax year so that a Self Assessment tax return can be made.
- 1.22 The next most common way to report gains is through the **UK Property tax return**. This return is also known as the '30 day online service'.
- 1.23 From 6 April 2020, UK residents, individuals, trustees or personal representatives with a gain arising on the disposal of UK residential property (on which there is Capital Gains Tax to be paid) must report it via the new UK Property tax return within 30 days of completion. The main exemption is if it is reported on a Self Assessment tax return within that 30 day period.
- 1.24 A small minority of people also choose to report gains early, through the voluntary '**real time**' **Capital Gains Tax service**.
- 1.25 Taxable gains on the disposal of any assets other than UK residential property (for example commercial property, shares or 'chattels' such as paintings) can be reported in this way. This is completely optional.
- 1.26 These options are not always mutually exclusive. If an individual is required to complete the main Self Assessment tax return because, say, they are

required to report income, then they must include disposals (and will receive a credit for the tax paid) previously reported through the UK Property tax return or the 'real time' Capital Gains Tax service. However, for some taxpayers their obligations can start and end with the UK Property tax return or the 'real time' Capital Gains Tax service if all the tax has been correctly paid in one of those ways.

- 1.27 It should be noted that the filing requirement for the UK Property tax return is within 30 days of completion of the sale, whereas the relevant date for including a property disposal in a Self Assessment tax return is the date of exchange.
- 1.28 Of the 1,200 or so respondents to the OTS Capital Gains Tax online survey, 22% said that they used accounting software to help them calculate or pay Capital Gains Tax.¹²
- 1.29 The interaction between different ways of reporting disposals is illustrated in a simplified way below.

Diagram 1.A: Diagram showing different ways of reporting capital disposals



Source: OTS

Losses

- 1.30 Individuals must notify HMRC of capital losses, within four tax years, if they want to offset them against gains. If a taxpayer is completing a Self Assessment tax return, including the Capital Gains Tax pages, then this is relatively straightforward. Any losses made in that tax year would be included and offset against gains, with any unused amount carried forward to a future tax year.
- 1.31 However, if a Self Assessment tax return is not being completed, the loss must be claimed by writing to HMRC. If the reason for not completing a return is because the gains are below the Annual Exempt Amount, then only the current year losses that are not used against those current year gains are available to be claimed and offset against future gains.

¹² See Annex D, under subheading 'OTS Survey'.

Record keeping and information gathering

- 1.32 In order to report a tax liability a taxpayer must first have the information available to calculate the tax. This could involve finding evidence of base costs, enhancement expenditure, losses, or nominations made many years ago.
- 1.33 Record keeping and information gathering are of central importance to the taxpayer experience of Capital Gains Tax. It is telling that approaching half of the 1,200 or so respondents to the OTS Capital Gains Tax online survey said that these took them the longest part of the Capital Gains Tax process.¹³

Table 1.A: Table showing responses to OTS CGT survey 2020

What aspects of the Capital Gains Tax process took you the longest?	
Keeping records or gathering information	40%
Calculating base costs	17%
Understanding reliefs or exemptions	12%
Understanding and completing the forms	10%
Understanding whether needed to report	7%
Obtaining valuations	5%
Following up with HMRC	3%
Other	7%

Source: OTS CGT Survey

- 1.34 This suggests that when HMRC consider how to improve their Capital Gains Tax infrastructure they should prioritise changes that will most support taxpayers with record keeping and information gathering.

Personal Tax Accounts and Single Customer Accounts

Background – how it works at the moment

- 1.35 Over 19 million taxpayers have signed up for a Personal Tax Account,¹⁴ which will ultimately be replaced by the Single Customer Account.
- 1.36 The Single Customer Account features strongly in HMRC's Tax Administration Strategy:¹⁵

'A [Single Customer Account] for all taxpayers that is easily accessible and secure is a key component of the government's vision. This will bring together data across different taxes and different data sources in order to provide personalised services

¹³ See Annex D, under subheading 'OTS Survey'. Due to rounding the table adds up to 101%

¹⁴ Overview of HMRC's annual report and accounts 2018 to 2019.
<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2018-to-2019/overview-of-hmrcs-annual-report-and-accounts-2018-to-2019>.

¹⁵ Building a trusted, modern tax administration system.
<https://www.gov.uk/government/publications/tax-administration-strategy/building-a-trusted-modern-tax-administration-system>.

for taxpayers, and at the same time improve parallel services for their agents or representatives working towards HMRC's vision for agents to be able to see and do what their clients can, and designing in agent access from the outset. It will help HMRC to learn more about what taxpayers need and want from their services, in turn helping them build better services and more targeted guidance for taxpayers in a wider range of different circumstances. Better and more real-time information would also enable the government to design more targeted taxes and reliefs.'

1.37 The government committed £68 million for the first year of development of the Single Customer Account and the Single Customer Record in Budget 2021.¹⁶

1.38 The Single Customer Record sits behind the Single Customer Account to bring together the different taxes and data sources associated with a particular taxpayer, enabling HMRC to deliver a more personalised and joined up service.

Observations – challenges with this approach

1.39 The OTS is encouraged that a Single Customer Account for all taxpayers that is easily accessible and secure is a key component of the government's vision.

1.40 As the OTS explored in its Reporting and Payment Review, an online digital platform is a modern way for a taxpayer to report income to HMRC and receive information about their tax affairs from the tax authority.¹⁷

1.41 However, the Personal Tax Account does not currently include all taxpayers (such as trusts or personal representatives) and it is not clear at what stage Capital Gains Tax will be included in the ambitious programme for the Single Customer Account.

Specific challenges

1.42 The Personal Tax Account as a free-standing system falls short of its potential, and some tools HMRC have built do not directly interact with it.

1.43 There is no interaction between the Personal Tax Account and the 'real-time' Capital Gains Tax service or the UK Property tax return. These operate on parallel systems that require separate registration.

1.44 It does not allow taxpayers to report information in a centralised and consistent way. Instead taxpayers are forced to interact directly with HMRC to make holdover claims, claim capital losses, or make main residence nominations.

1.45 It does not record the information that the taxpayer has already provided which may be useful later. So, for example, it does not record the capital loss claims that have already been made by the taxpayer and flag up when they

¹⁶ FST speech to HMRC virtual stakeholder conference.

<https://www.gov.uk/government/speeches/speech-to-hmrc-virtual-stakeholder-conference>.

¹⁷ Tax reporting and payment: Simplifying tax for self-employed people and residential landlords, OTS, p5.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843531/OTS_Tax_reporting_and_payment_review.pdf.

can be utilised. This is particularly relevant as it can be easy to lose track of capital losses especially when changing advisers.

Conclusions – how the system could be improved

- 1.46 A future modern and fully integrated Single Customer Account would log relevant information for the taxpayer, interact with other Capital Gains Tax filings by the taxpayer and act as a gateway to pay the tax.
- 1.47 This would ease the administrative burden for potentially all of the 500,000¹⁸ or so people who file returns of capital gains in any given year. It would also help those who struggle to pay, by making it easier to be aware of what tax may have to be paid. Agents should have access with the taxpayer's approval.
- 1.48 The OTS recognises that a fully integrated system will be expensive and take time and more resources to create.

Specific improvements

- 1.49 As the OTS's first report on Capital Gains Tax stated, the Single Customer Account could be a central hub to claim losses.¹⁹ It could also hold details of main residence nominations, and ultimately it could be at the core of the effective implementation of many of the recommendations that follow in this report, but the OTS accepts that it may have to be developed in stages.
- 1.50 So the OTS has also considered interim improvements alongside wholesale reform, such as the following:
- the Single Customer Account could link to the UK Property tax return and the 'real-time' Capital Gains Tax service
 - the system could also be used to give prompts about other areas where there may be low awareness, such as the disposal of moveable items such as chattels by way of sale or gift
 - in addition, as outlined in Chapter 6, it could be a space where enterprise investments could be notified to HMRC

Recommendation 1

HMRC should integrate the different ways of reporting and paying Capital Gains Tax into the Single Customer Account, making it a central hub for reporting and storing Capital Gains Tax data.

¹⁸ See note 5 on page 6: HMRC have advised that approximately 500,000 individuals submitted a Capital Gains Tax filing for the tax year 2017-18.

¹⁹ OTS Capital Gains Tax Review: Simplifying by design.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935073/Capital_Gains_Tax_stage_1_report_-_Nov_2020_-_web_copy.pdf.

'Real time' Capital Gains Tax service

Background – how it works at the moment

- 1.51 The 'real time' Capital Gains Tax service gives UK resident individuals the option to report and pay Capital Gains Tax earlier, as well as removing the requirement to complete a Self Assessment tax return if there is no other need to complete one and all the tax due is paid via this service. It is a voluntary service, with the deadlines for reporting and payment of the tax linked to the normal Self Assessment rules.
- 1.52 The service was introduced as there are taxpayers who, having perhaps made only one disposal, want to declare and pay the tax right away. This way all the compliance work can be dealt with at the time of the transaction and the tax paid out of the proceeds received.
- 1.53 It also means that taxpayers who do not otherwise need to complete a Self Assessment tax return only have to provide HMRC with the details of this single transaction. If this service were not available, they would have to complete a Self Assessment tax return and report their income, as well as the gain, even if there was no Income Tax to pay (for example because it was all paid under Pay As You Earn or was less than the Personal Allowance of £12,500).
- 1.54 Once the taxpayer has provided the information under this service, HMRC issue a reference number and instructions on how to pay the tax. Although the statutory due date for payment is still 31 January following the end of the tax year, this service gives an opportunity for the tax to be paid earlier. A taxpayer must use this service before 31 December following the end of the tax year, in order that HMRC have time to issue the payment instructions before the statutory due date. It is possible to make an amendment under this service.
- 1.55 The 'real time' Capital Gains Tax service is not widely used. HMRC data shows that in the 2018-19 tax year, which was before the UK Property tax return was introduced, only 5,010 returns were made using the 'real time' Capital Gains Tax service, with just 1,670 returns relating to the disposal of assets than were not residential property. Furthermore, 1,360 of individuals using this service also filed a Self Assessment tax return including the Capital Gains Tax pages.²⁰ Since 6 April 2020 the disposal of UK residential property is now reported via the UK Property tax return.

Observations – challenges with this approach

- 1.56 The OTS Tax Reporting and Payment: simplifying tax for self-employed people and residential landlords report found that allowing many people to pay Income Tax early could help them plan and predict their tax affairs.²¹ This principle also holds for Capital Gains Tax, if to a lesser extent.

²⁰ HMRC data 2018-19. See Annex D.

²¹ Tax reporting and payment: Simplifying tax for self-employed people and residential landlords, OTS. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843531/OTS_Tax_reporting_and_payment_review.pdf.

- 1.57 Any measures that mean that taxpayers do not have to complete a Self Assessment tax return where they are not otherwise required to do so are also helpful. So, in principle, the 'real time' Capital Gains Tax service is a step in the right direction.
- 1.58 However, the OTS considers that the 'real time' Capital Gains Tax service is an area where there is much room for improvement.
- 1.59 In particular, the very low number of people using it is disappointing given HMRC's long-term aspiration to reduce the numbers of taxpayers that have to complete a Self Assessment tax return.²² If this service was improved these taxpayers would be more inclined to use this service, rather than complete a Self Assessment tax return.

Specific challenges

- 1.60 The main challenges of the 'real time' Capital Gains Tax service are as follows:
- low levels of awareness – 67% of respondents to the OTS online survey had not heard of it²³ and it is disappointing that there were only 1,670 users of the service for disposal of assets that were not residential property in the 2018-19 tax year,²⁴ as compared with the 250,000 or so people who pay Capital Gains Tax each year²⁵
 - the lack of integration with, or a link to, the Personal Tax Account
 - the service does not work for all users of the tax system. Agents cannot access the service on behalf of their clients, and it is not immediately obvious how digitally excluded taxpayers can access paper returns
 - its legal status – the current 'real time' Capital Gains Tax service is not formalised as a return and several respondents to the OTS Call for Evidence questioned whether it has a sufficiently robust legislative framework which may discourage some from using it

Conclusions – how the system could be improved

- 1.61 The OTS considers that there would be benefit in formalising the administrative arrangements for the 'real time' Capital Gains Tax service by effectively making it into a standalone Capital Gains Tax return.
- 1.62 A formalised return would be then governed by defined rules, with clear enquiry and filing deadlines. This would still allow taxpayers to report and pay Capital Gains Tax earlier, which was one of the main reasons for introducing this service.

²² Making tax easier: The end of the tax return, HMRC.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/413975/making-tax-easier.pdf.

²³ See Annex D, under subheading 'OTS Survey'.

²⁴ HMRC data 2018-19. See Annex D.

²⁵ Average 254,000 individual taxpayers over four tax years from 2015-16 to 2018-19.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908647/Table_1.pdf.

- 1.63 It should then be integrated into the new Single Customer Account, so that taxpayers would no longer be required to tell HMRC about the gain again through a Self Assessment tax return unless they need to complete one because they had other income or gains to report.
- 1.64 The scope of the service should be expanded to include agent access.
- 1.65 It would be all the more important to improve things in this area if the government were minded to reduce the Annual Exempt Amount, or freeze it beyond the 2025-26 tax year (announced by the Chancellor in the March 2021 Budget), as more taxpayers would then have taxable gains to report.²⁶

Recommendation 2

The government should formalise the administrative arrangements for the 'real time' Capital Gains Tax service, effectively making it into a standalone Capital Gains Tax return that is also usable by agents.

UK Property tax return

Background – how it works at the moment

- 1.66 Lack of awareness of the UK residential property rules presents a particular problem for taxpayers.
- 1.67 Approximately 150,000 individuals reported a disposal of residential property in tax year 2018-19, of whom 85,000 had a Capital Gains Tax liability.²⁷ (The requirement to report a disposal under Self Assessment goes wider than situations in which there is Capital Gains Tax to pay).
- 1.68 From 6 April 2020, taxable capital gains on disposals of UK residential property,²⁸ by UK-resident individuals, trustees or personal representatives must be reported to HMRC and the tax paid within 30 days of the completion date for the disposal.
- 1.69 This is primarily an online service but there is a facility for a paper return to be made for digitally excluded taxpayers.

UK Property tax return take up

- 1.70 The total number of returns made in the 9 month period from 6 April 2020 (6 May being the first due date for these returns) to 6 January 2021 is illustrated in the chart below.

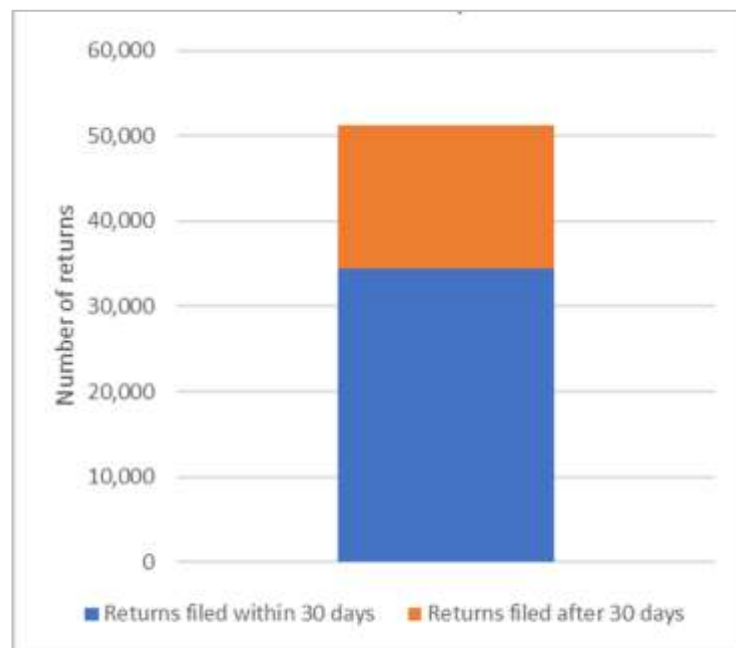
²⁶ Capital Gains Tax: Simplifying by Design, OTS.

<https://www.gov.uk/government/publications/ots-capital-gains-tax-review-simplifying-by-design>.

²⁷ HMRC have advised that approximately 85,000 individuals paid Capital Gains Tax on a disposal of residential property for tax year 2018-19 (out of 150,000 reporting a disposal of residential property).

²⁸ HMRC guidance. <https://www.gov.uk/guidance/capital-gains-tax-for-non-residents-uk-residential-property#direct-disposals>

Chart 1.A: Chart showing UK Property tax returns filed 6 April 2020 to 6 January 2021



Source: HMRC statistics. Data collection period 6 April 2020 – 6 January 2021.²⁹

- 1.71 The chart shows that 67% were filed within 30 days and 33% filed outside of 30 days.
- 1.72 HMRC extended the deadline to 31 July 2020 for disposals with completion dates between 6 April 2020 to 30 June 2020 which will have affected the timing of some returns.
- 1.73 There may however be some taxpayers who have not completed a UK Property tax return at all when they should have done, due to a lack of awareness of the new system. The numbers affected should become clearer once Self Assessment tax returns are made for the 2020-21 tax year (which are due by 31 January 2022).
- 1.74 Ordinarily, any analysis would try to gauge such figures by making a comparison with the overall level of UK residential property disposals in previous years, but this is not feasible given the impact of COVID-19 on the number of property transactions during the 2020-21 tax year.

UK Property tax return process

- 1.75 In order to use the UK Property tax return system, within the 30 day period the taxpayer must create a Government Gateway user ID (if they don't already have one) and set up a UK property account. If using an agent, even if there is already an authorisation in place for the agent to deal directly with HMRC, a new authorisation has to be put in place. Emerging evidence from HMRC suggests that about 40% of UK Property tax returns are filed by agents.³⁰

²⁹ See Annex D.

³⁰ See Annex D.

1.76 To be able to correctly complete the return and calculate the tax payable a taxpayer will need the following information:

- the price paid for the property (or its value when received as a gift or inheritance)
- the cost of any capital improvements
- the third party costs of acquisition and disposal, such as legal fees
- the extent to which Private Residence Relief applies to any part of the gain
- details of any capital losses from earlier disposals in the tax year or any available Annual Exempt Amount to offset against the gain
- details of any capital losses brought forward from previous tax years
- an estimate of their income for the whole tax year to determine which tax rate or rates are likely to apply

1.77 If it is not possible to obtain this information in the 30 day period, or the taxpayer chooses not to form a view about their wider income and capital gain or loss position for the tax year, then the tax paid is effectively a payment on account and only an estimate of the tax payable. Any further tax payable (or repayable) would follow either an amendment of the UK Property tax return or in the Self Assessment tax return.

Observations – challenges with this approach

1.78 Some of the problems experienced by taxpayers are likely to reduce over time as the new system beds in and awareness improves.

1.79 The government may need to wait until February 2022 when Self Assessment tax returns have been filed for the tax year of this measure being introduced to fully understand the number of UK Property tax returns that were either late, not submitted at all or inaccurately estimated. However, it is clear that the challenges are more than just ‘teething’ troubles.

Temporary challenges

1.80 HMRC have continued to develop the digital service and functionality has improved since it was first introduced. However, there are still some issues, including in relation to personal representatives administering an estate, who can submit a return but are then unable to view it, make amendments or obtain online payment details.

The 30 day period

1.81 For many taxpayers, 30 days is a very ambitious target – and it is clearly a cause for concern that a third of the returns that were filed took longer than 30 days to arrive.³¹ This was strongly reflected in the negative responses that this policy area received in the OTS Call for Evidence.

³¹ HMRC data 6 April 2020 – 6 January 2021. See earlier footnote and Annex D.

- 1.82 In theory taxpayers could start to prepare for the submission of the return before the 30 day period starts, as they will know about their intended disposal in advance. However, this presupposes better general awareness of this obligation than is indicated by current evidence.
- 1.83 Even with adequate awareness and preparation the OTS considers that 30 days is still a challenging deadline for many taxpayers, who will not dispose of properties often, to gather the information that they need to calculate the tax due and, if they have a tax liability, to register in order to fulfil their obligations.
- 1.84 The OTS has also been told that the timeframe presents a particular challenge for separating couples who may not receive their share of the money to pay the tax until any divorce settlement is finalised.

Systems challenges

- 1.85 In addition, the new system itself is complex.
- 1.86 This is particularly true for agents - one professional adviser told the OTS they had produced a 30 page guide on how to operate the new system.
- 1.87 The challenge agents face does not start with the new system. HMRC are in the process of modernising their systems and processes, but one of the areas that currently falls short is agent registration which is also a complex and a time-consuming process as authorisation permissions cannot be neatly rolled over from one tax head to another.³²
- 1.88 This issue goes much wider than Capital Gains Tax, but it is particularly relevant here due to the short timeframe within which the UK Property tax return has to be made.

Finalising the tax position

- 1.89 If the taxpayer does not have all the information required to calculate the tax at the time, they will need to make estimates, so the tax paid will be not final. The taxpayer will then be required to amend the return to correct the position, which may mean that further tax should have been paid within the 30 days or too much tax has been paid. The UK Property tax return generally cannot be amended because of subsequent events, such as the realisation of a capital loss on a share portfolio, so in such cases a Self Assessment tax return would need to be completed.
- 1.90 Also, if the taxpayer has a Self Assessment filing requirement, they must include the disposal again in this tax return, with a credit for the tax paid, irrespective of whether any amendment is required to the original information filed. Furthermore, the disposal is only included if the date of exchange falls within the tax year. For example, if the date of exchange is 1 March 2021 and completion on 10 April 2021, the transaction will need to be included in the 2020-21 tax return.

³² The tax administration framework: Supporting a 21st century tax system, p16.
<https://www.gov.uk/government/consultations/call-for-evidence-the-tax-administration-framework-supporting-a-21st-century-tax-system>.

- 1.91 The enquiry window for a UK Property tax return is the same as under Self Assessment, as it relates to the tax year. So the length of the enquiry window on a property disposal will be longer if the disposal is made earlier in a tax year.

Guidance challenges

- 1.92 There is no guidance on whether an amendment to the UK Property tax return must be made when the estimate is confirmed or only corrected when the disposal is reported on the Self Assessment tax return (if one is being made).
- 1.93 The OTS received comments that it was not clear from HMRC's guidance in what circumstances, if any, late interest would be charged, particularly in relation to what HMRC would consider to be reasonable in estimating the tax due. This could be significant as interest can potentially apply for a period of up to 20 months.

Conclusions – how the system could be improved

Extending the 30 day period

- 1.94 One option would be for the government to extend the reporting and payment deadline to say 60 or 90 days, to give taxpayers more time to fulfil their tax obligations. In this scenario, alongside considering other factors such as the fact that a third of the initial returns took longer than 30 days to arrive, the government would need to consider the Exchequer implications.
- 1.95 When the measure was first introduced there was positive cash flow for the Exchequer estimated as £935 million for the 2020-21 tax year. The Exchequer effect in the 2021-22 tax year of moving to 60 days or 90 days in that tax year would be approximately £105 million or £210 million respectively - although the cost would come down significantly in subsequent tax years.³³

Raising awareness

- 1.96 Alternatively, the government could raise early awareness through providing property professionals such as estate agents, conveyancers or auctioneers with an HMRC-approved standard information pack.
- 1.97 These professionals could then be required to pass on such information packs to taxpayers when a residential property is placed on the market or instructions given to a conveyancer. This could help ensure that these taxpayers have the opportunity to gather information in advance of the sale and therefore well in advance of the 30 day time period starting.
- 1.98 Careful thought would need to be given to whether the information should be distributed by estate agents, conveyancers, or both. In order to minimise the additional effort and spare those without tax expertise from having to interpret their clients tax affairs, the OTS envisages that intermediaries would distribute generic HMRC-provided information rather than anything which takes account of the specific circumstances of their client.

³³ HMRC data 2020-21 & 2021-22. See Annex D.

Non legislative improvements

- 1.99 In any event, HMRC should continue to invest in improving the user experience through measures such as:
- 1.100 Integrating the UK Property tax return into the new Single Customer Account so taxpayers are readily directed to this reporting service and have access to previous returns.
- 1.101 Improvements to HMRC guidance (**recommendation 14**) to:
- include in the information checklist that a taxpayer will need to know their annual income as well as realised gains and losses
 - include examples of what constitutes a reasonable estimate of the Capital Gains Tax payable and the circumstances when HMRC would seek to charge interest
 - provide guidance on when an amended UK Property tax return should be filed if estimated figures are used
 - include screenshots to take taxpayers through the process in the simplest way possible
 - refer to gifts of properties as well as to 'sales' (or disposals)
- 1.102 An enhanced agent experience, including improved agent registration and access.
- 1.103 Although broader than just Capital Gains Tax, ideally once an agent is registered with HMRC for a client they should be able to act across the full range of taxes unless the client specifies otherwise, rather than needing to register separately every time for different things.

The role of property professionals

- 1.104 Some respondents to the OTS Call for Evidence suggested that property professionals could play a greater role in calculating any tax owing and handing it over directly to HMRC much as they are expected to do with Stamp Duty Land Tax.
- 1.105 However, the OTS does not consider this a realistic option as these professionals are not tax specialists and calculating Capital Gains Tax is more complex than calculating Stamp Duty Land Tax. This reflects the fact that Capital Gains Tax does not relate purely to the proceeds of a disposal.
- 1.106 For instance, there may be a need to take enhancement expenditure into account, as well as the taxpayer's personal tax position generally. Understanding the taxpayer's personal tax position would inevitably involve an assessment of their level of income, any available Annual Exempt Amount, and any capital losses which would reduce tax payable.

Recommendation 3

The government should consider extending the reporting and payment deadline for the UK Property tax return to 60 days, or mandate estate agents or conveyancers to distribute HMRC provided information to clients about these requirements.

Collection and use of Capital Gains Tax data

Background – how it works at the moment

- 1.107 The Capital Gains Tax summary form (SA108) filed under Self Assessment requires certain details of transactions, which can include the dates of acquisition and disposal of the asset, to be entered in either a free text box or as a separate attachment. Before the removal of taper relief in 2008, these dates were entered into pre-formatted boxes on the forms.

Observations – challenges with this approach

- 1.108 The OTS considers that when specific data is required by HMRC, whether to establish eligibility or to aid compliance or policy analysis, it may end up being a poorer taxpayer experience to have to enter details in a free text box or separate computation than to be able to use an embedded pre-formatted box.
- 1.109 Requiring data to be captured in free text means that it is more likely to be omitted, and where it is included it is less likely to be comprehensive or as useful, especially if disposals attracting different reliefs are aggregated together.
- 1.110 It is also then more difficult for HMRC analysts to carry out reliable or comprehensive data analysis, for example in respect of holding periods or reliefs, to inform policymaking. For example, during its work on the first Capital Gains Tax report the OTS learned that the quality of data relating to holding periods after 2008 had reduced, after pre-formatted boxes were removed.

Conclusions – how the system could be improved

- 1.111 Ideally, where possible, the Capital Gains Tax summary form should allow for transaction details such as dates of acquisition and disposal or clearance references to be entered into pre-formatted boxes in future, and claims relating to different reliefs kept separate from each other.

Share pooling

Background – how it works at the moment

Characteristics of listed shares

- 1.112 Shares that are listed on a stock market are a liquid investment, meaning that they can be readily bought and sold. The prices of individual shares are usually quite small, so it is not unusual for people to buy hundreds or even thousands at once, or to build up a shareholding by buying more shares over a period of time.
- 1.113 Listed shares and other comparable securities³⁴ are by nature fungible assets. This means that any one share is identical to any other and worth the same amount. It makes no commercial difference to an investor which 500 of their 1,000 shares of a particular type they sell and which 500 they keep.

³⁴ Such as shares AIM-listed companies, open-ended investment companies and funds, and units in unit trusts.

- 1.114 The following analysis relates to listed shares and similar securities. Recommendation 4 is not intended to cover other fungible assets such as cryptocurrencies.

Share pooling

- 1.115 Share pooling is a simplification to the usual tax rules which is applicable to shareholdings which have been acquired in tranches over time and at different prices.
- 1.116 When there is a disposal of some of the shares, the total cost of acquiring all of the shares is apportioned, so that the base cost of the shares sold is based on the average acquisition price of all of the shares.

Size and frequency of gains on disposal of listed shares

- 1.117 In the tax year 2017-18, net gains on the disposal of listed shares (after allowing for losses) totalled £12.4 billion and accounted for 21% of total net gains of £58.9 billion.³⁵
- 1.118 In that tax year, a total of around 195,000 individuals reported gains on the disposal of listed shares.³⁶ Of these, around 90,000 individuals paid Capital Gains Tax on a total of around 843,000 disposals of shares,³⁷ which is an average of around nine disposals by each taxpayer. Each disposal represents a shareholding in a particular company.
- 1.119 Multiple disposals of different shareholdings by the same taxpayer are to be expected, as most investors in listed shares invest in a number of different shareholdings within a portfolio (a broad term for a collection of investments), to mitigate the risk of any one company's shares falling in value. A small number of individuals hold more than one portfolio.
- 1.120 A share portfolio can be held directly or through a platform or broker acting on an 'execution only' basis. In these cases the taxpayer controls the decisions to buy and sell shares.
- 1.121 A share portfolio can also be held with a discretionary manager, in which case an independent third party makes those decisions, or the broker can act in an advisory capacity with the taxpayer maintaining control.

The share pooling calculation

- 1.122 The pooling calculation is used to calculate the base cost of a shareholding when only part of that shareholding is sold (subject to an anti-avoidance rule that applies when shares are acquired on the same day as the sale or in the 30 days following). This means that an average base cost per share is used instead of having to match each share that is sold to its specific acquisition cost.

³⁵ HMRC's Capital Gains Tax statistical tables, Table 7. See Annex D.

³⁶ HMRC data. See Annex D.

³⁷ HMRC's Capital Gains Tax statistical tables, Table 7. See Annex D.

- 1.123 Share pooling also means that the taxpayer (or portfolio manager) only has to keep track of the total base cost of a shareholding in any particular company.

Example 1 – selling pooled shares

Theodora owns 15,000 shares in Rome plc. She first acquired 5,000 shares ten years ago for £0.20 each, then another 6,000 shares five years ago for £1.50 each and then another 4,000 shares three years ago for £2.00 each.

In total, Theodora's holding in Rome plc has cost £18,000 (an average of £1.20 each per share).

Theodora sells half of her shareholding – 7,500 shares – for £2.10 each, receiving proceeds of £15,750. To calculate her gain, she needs to deduct the base cost of the shares.

It makes no difference to Theodora which specific shares she sells. The share pooling rules mean Theodora takes the average base cost – effectively half of £18,000 in this case – and deducts this against the proceeds. So her gain is calculated:

$$£15,750 - £9,000 = £6,750$$

The remaining shares have a total base cost of £9,000 (£1.20 each).

Observations – challenges with this approach

- 1.124 In cases where the taxpayer only has a single shareholding, share pooling is an effective simplification, as it allows the holding to be treated as one and there is no need to match specific shares to specific records. So the accounting records needed are simpler.
- 1.125 However, the requirement to pool can result in greater complexity in situations where an individual has more than one portfolio held with different service providers (such as investment managers or platforms). Then, all holdings of the same shares in a particular company have to be aggregated and pooled, even though they are held by separate parties.

Complexity

- 1.126 Investment managers usually produce statements for their clients that include details of the acquisition cost and sales proceeds and may also include a calculation of a gain or loss. However, where there are multiple portfolios with holdings of the same shares, the base cost of any disposals must be recalculated pooling all of the shares, even if the disposal was clearly only out of one discrete holding. This takes additional time, allows more room for error and generally requires the taxpayer to engage a professional agent.
- 1.127 In practice, the OTS has been told by investment managers and tax agents that multiple portfolios are relatively rare and limited to wealthy taxpayers who would tend to have an agent anyway. However, there is a wider

advantage to removing the pooling requirement, in facilitating automated reporting, which is being considered as part of the OTS's current work on making smarter use of third party data.³⁸

Future reporting

- 1.128 In the future, as digital technologies are increasingly used to improve the taxpayer experience, HMRC may wish to enable or require financial institutions and platforms to report taxpayer data directly, with a view to pre-populating tax records and removing some of the administrative burden of Self Assessment.
- 1.129 Where there are multiple portfolios, such reporting would be very difficult because of the need for someone to carry out a calculation involving data drawn from each of the organisations' records, which would not ordinarily be shared with others.

Conclusions – how the system could be improved

- 1.130 The OTS considers that the government should explore whether individuals holding more than one portfolio with different investment managers or platforms could be treated as holding each in a separate share pool.
- 1.131 This would save taxpayers and their agents from having to bring together and analyse information from several different investment managers and so reduce the risk of errors arising in their tax return.
- 1.132 It is in principle possible that, by removing the requirement to pool for all portfolios, taxpayers might be able to manipulate the rules. However, the OTS notes that this is not possible in the case of discretionary-managed portfolios, as the managers make the decisions to buy and sell. Even if the taxpayer controls multiple portfolios, they would need several portfolios with sizeable holdings in the same shares, under the control of a taxpayer who was minded to manipulate the rules, in order to derive any tax benefit.
- 1.133 The OTS considers that the compliance benefit of facilitating reporting is likely to outweigh the risk of manipulation, particularly if this underpins automated reporting by third parties, which would be a significant step in countering error, omission and evasion. This is being considered in detail in the OTS's work on making smarter use of third party data.³⁹

Recommendation 4

The government should consider whether individuals holding the same share or unit in more than one portfolio should be treated as holding them in separate share pools.

³⁸ Third Party Data Reporting Review Scoping Document, OTS.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945431/Third_party_data_scoping_document_Dec_2020.pdf.

³⁹ Third Party Data Reporting Review Scoping Document, OTS.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945431/Third_party_data_scoping_document_Dec_2020.pdf.

Chapter 2

Main homes

Overview

- 2.1 Homeowners who sell their main home are usually not subject to Capital Gains Tax on the sale.
- 2.2 This is the result of Private Residence Relief which, broadly, provides full relief for gains arising on a main home and has been an important feature of Capital Gains Tax since it was introduced in 1965.
- 2.3 The number of individuals who pay Capital Gains Tax each year is around 250,000¹, which is less than 1% of the adult population.² Without a relief for main homes, many more of the estimated 1.2 million³ residential property sales each year would fall within the scope of Capital Gains Tax.
- 2.4 Private Residence Relief is estimated to benefit 1.5 to 2 million homeowners annually and to have cost the Exchequer £25 billion in tax year 2019-20.⁴

Policy objective

- 2.5 Niall MacDermot MP, the Financial Secretary to the Treasury when Capital Gains Tax was introduced in 1965, explained the policy intention in this way:

*'The reasons for our exemption are to encourage home ownership, to avoid any feeling of resentment there might be - and I think that it would be widespread if this was subject to tax -and, also, from a social point of view, to assist greater mobility, which is an important matter from a labour point of view. The effect of it, as I say, is to make home ownership very attractive from the investment point of view.'*⁵

¹ Average 254,000 individual taxpayers over four tax years from 2015-16 to 2018-19.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908647/Table_1.pdf

² The adult population of the UK was estimated to be 52.7 million in 2019.

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland>

³ Monthly property transactions completed in the UK with value of £40,000 or above, HMRC.

<https://www.gov.uk/government/statistics/monthly-property-transactions-completed-in-the-uk-with-value-40000-or-above>

⁴ Non-structural tax reliefs, HMRC. Refer to Annex D.

<https://www.gov.uk/government/statistics/main-tax-expenditures-and-structural-reliefs>

⁵ Hansard Thursday 27 May 1965.

[https://hansard.parliament.uk/Commons/1965-05-27/debates/949dc344-f31c-4644-85db-78f9892d9948/Clause28%E2%80%9494\(PrivateResidences\)](https://hansard.parliament.uk/Commons/1965-05-27/debates/949dc344-f31c-4644-85db-78f9892d9948/Clause28%E2%80%9494(PrivateResidences))

- 2.6 While debating recent amendments to Private Residence Relief, the Rt Hon Jesse Norman MP, the current Financial Secretary to the Treasury, gave an insight into the current government's thinking about the focus of the relief:

*'The government are committed to keeping family homes out of Capital Gains Tax, through Private Residence Relief. The reforms make Private Residence Relief fairer by better targeting relief at owner-occupiers.'*⁶

Introduction to Private Residence Relief

- 2.7 It is not enough for an individual to own a property for it to qualify for Private Residence Relief. It must also be a 'residence' of theirs.
- 2.8 The meaning of the term 'residence' has evolved through caselaw. There generally must be a degree of permanence and the quality of occupation is more important than the length of occupation.⁷
- 2.9 Most homeowners will live in their home throughout their period of ownership and will receive full Private Residence Relief. Short periods away from home, such as for holidays, are ignored.
- 2.10 Where a homeowner lives away from their home for some or all the period of ownership, the period is split into two parts; the part that qualifies for Private Residence Relief and the part that does not qualify. The gain is time apportioned between the two, with Private Residence Relief available for the amount attributable to the qualifying part.
- 2.11 It is estimated that just over 9,000 people paid Capital Gains Tax on a property disposal that received only partial Private Residence Relief in tax year 2018-19.⁸ This is small in comparison with the number of property sales completed in that tax year, which was over 1.2 million.⁹

Ancillary reliefs

- 2.12 Private Residence Relief is supported by a range of ancillary reliefs (see Diagram 2.A) which cater for a small number of specific circumstances, such as renovating the home for habitation, a delay in selling at the end of occupation, letting out a property, or moving elsewhere for work.

⁶ Hansard Tuesday 9 June 2020.

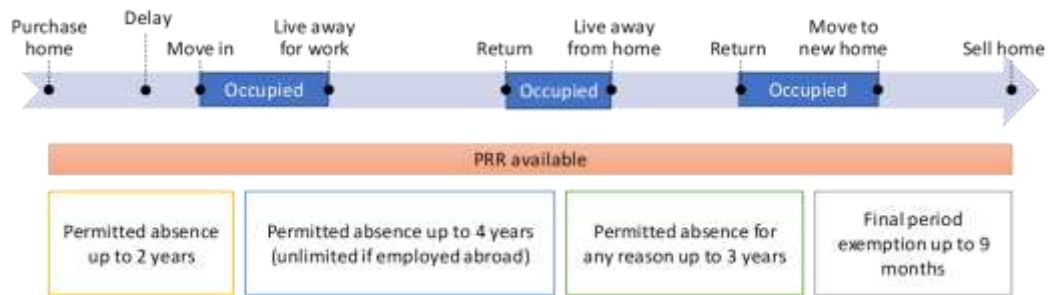
[https://hansard.parliament.uk/Commons/2020-06-09/debates/5927b7da-9829-4504-b795-7657d95cdd1a/FinanceBill\(ThirdSitting\)](https://hansard.parliament.uk/Commons/2020-06-09/debates/5927b7da-9829-4504-b795-7657d95cdd1a/FinanceBill(ThirdSitting))

⁷ 'sufficient degree of permanence, continuity or expectation of continuity to justify its description as residence' Goodwin v Curtis [1988] STC 475.

⁸ HMRC estimate. See Annex D.

⁹ Monthly property transactions completed in the UK with value of £40,000 or above, HMRC.
<https://www.gov.uk/government/statistics/monthly-property-transactions-completed-in-the-uk-with-value-40000-or-above>

Diagram 2.A: Timeline of Principal Residence Relief and ancillary reliefs on a main home



Source: OTS

- 2.13 There is also an exemption for homeowners who live away from their home in job-related accommodation. This removes restrictions to the relief for members of the armed forces, members of the clergy and others who must live away from their main home.

Scope of Private Residence Relief

Background – how it works at the moment

Gardens and grounds

- 2.14 Private Residence Relief is automatically available in full if the area of the garden and grounds of a main residence does not exceed 0.5 hectares.
- 2.15 If the garden and grounds exceed this area then relief may be available for a larger area if that larger area is required for the reasonable enjoyment of the home, having regard to its size and character.

Home built in garden

- 2.16 Private Residence Relief is available on a home used as a main residence 'at any time' during the period of ownership (subject to the rules about absences), but is available for a garden associated with a home only if it is used as a garden at the time that it is sold. Any history of the land's having previously been used as a garden is irrelevant.
- 2.17 As a result, where a new house is built at the end of someone's garden, Private Residence Relief is not available for any period before the new house was built on it.¹⁰

Example 2 – Private Residence Relief over time

The Vinney family home was purchased in 1990 and has a large garden.

Once the Vinney children have left home, the Vinney parents decide to downsize. They separate off a section of the garden to build a bungalow to live in. They continue to live in the family home until construction of their bungalow is complete.

¹⁰ Henke v HMRC [2006] Special Commissioners 550.

In 2010, they move into the bungalow and sell the family home.

In 2020, they sell the bungalow.

Private Residence Relief allowed:

In 2010 – Full Private Residence Relief available on the Vinney family home

In 2020 – Partial Private Residence Relief available on the bungalow.

The relief is available only for one third of the period over which the capital gain has arisen, as it is not available for the 20 year period before the house was built. The history of the land's previous use as a garden for the family home is ignored, even though relief would have been available had it been sold separately in 2010.



Period of occupation

- 2.18 Eligibility for Private Residence Relief begins on the date of completion of the purchase of the property and runs to the date of completion of its sale.
- 2.19 This can be contrasted with the calculation of the capital gain on the property, which runs from the date of exchange of contracts for the purchase to the date of exchange of contracts for the sale.

Observations – challenges with this approach

What is a residence

- 2.20 The OTS has been told that the case law in this area is well developed and understood.
- 2.21 It has however been suggested to the OTS that it could be helpful to codify the caselaw into statute, to reduce to the number of tribunal cases in this area.
- 2.22 The OTS agrees that statutory tests can be well suited to some areas of tax legislation, such as the statutory test for whether an individual is UK resident for tax purposes. However, the OTS does not believe this is such an area given the variety of personal situations that can arise and change over time. A case law approach allows a contemporaneous assessment of the facts of

each case on its merits, rather than a judgement against a pre-determined set of criteria, with the risk of hard cases.

Gardens and grounds

- 2.23 The position for a small number of homeowners where gardens or grounds exceed 0.5 hectares, as HMRC acknowledge in its guidance, is 'a common area of disagreement between HMRC and taxpayers.'¹¹

Homes built in the garden

- 2.24 The OTS observes that the mechanics of the legislation create an unexpected tax result when a homeowner builds a new home in their existing garden and moves into it.

When ownership begins

- 2.25 Some respondents have said that there is a lack of clarity in the legislation about when ownership begins, when purchasing a home. This has been clarified by a recent case – the period of ownership of a home begins when a house purchase is completed, as before this date it is usually not possible for the homeowner to occupy the home.¹²
- 2.26 This clarification may need time to bed down, but it is not a source of complexity as the court judgement is clear and HMRC are not seeking to challenge the judgement.

Conclusions – how the system could be improved

- 2.27 The OTS considers that the scope of Private Residence Relief is generally fit for purpose and adequately supports its policy objective.
- 2.28 However, the OTS suggests that it is an anomaly that the mechanics of the rules provide an incentive for homeowners to sell their garden to a developer in preference to building another home to move into on their own land themselves, as outlined in the Vinney family home example above. The OTS expects many homeowners who should receive partial relief rather than full relief are not aware there is a potential tax liability and may fall within the tax gap.
- 2.29 The OTS considers that the rules should be changed to remove this distortion, as such situations are not uncommon.
- 2.30 In principle this could be done by changing the rules to remove relief for homeowners who sell their garden to a developer, however, this is inherently challenging as it is easy to sell the entire home instead of sectioning off the garden with development potential, which would prevent a restriction based on homeowners who sell to developers.
- 2.31 The OTS suggests, rather, that the government consider adjusting Private Residence Relief to fully cover developments in a taxpayer's garden which the taxpayer then moves into. One way of achieving this could be by changing

¹¹ HMRC Capital Gains Tax manual, Private residence relief: permitted area: procedures.

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg64803>

¹² Higgins v R & C Commrs [2019].

the start date of the period of ownership for tax purposes in this situation. This would make self builds more tax-neutral and also cover other similar anomalous situations.

Recommendation 5

The government should consider adjusting Private Residence Relief to cover developments in a taxpayer's garden which the taxpayer subsequently occupies.

Owning more than one home

Background – how it works at the moment

- 2.32 Private Residence Relief relieves a gain arising on a home lived in by the homeowners as an only or main residence. For most people this is relatively simple – it is the one house they own and live in. However, the 1.4 million people who own second homes¹³ are able to nominate which home should qualify.
- 2.33 It is clear that the relief is intended to cover one main home and successive governments have sought to minimise opportunities for doubling up relief on two properties, indicating this is a desired policy objective.

Nominating a main home

- 2.34 Homeowners resident in the UK and have more than one home which qualifies as a residence can write to HMRC to nominate the home to which they wish Private Residence Relief to apply.
- 2.35 The ability to nominate which home will receive Private Residence Relief allows homeowners to make the choice which is likely to be the most beneficial to them in the future.
- 2.36 Making a nomination is optional. If the homeowner does not nominate then the relief will apply to the home which is in fact their 'main' residence. This is sometimes easy to determine but can be open to interpretation. It is based on a range of factors such as how long they spend there or where their family live. However, a nomination can override this.
- 2.37 A nomination must be made within two years of the date the individual started or ceased to have an additional home or a new combination of residences. The nomination can then be amended at any time in the future.
- 2.38 Each time there is a new combination of residences, a new election should be made within two years as the original election ceases to have effect. A nomination should still be made even if the new election confirms that the same home remains the homeowner's main residence.
- 2.39 The nomination does not need to follow the reality of how the homeowner splits their life between their homes and no account needs to be made of how much time is spent in each home, as long as each home is a residence.

¹³ Game of Homes: The rise of multiple property ownership in Great Britain, Resolution Foundation, p7. <https://www.resolutionfoundation.org/app/uploads/2019/06/Game-of-Homes.pdf>

- 2.40 Couples who are married or in a civil partnership and who live together can only have one main home for these purposes. Other couples can each individually have a separate main home.

Observations – challenges with this approach

- 2.41 Homeowners who are well informed or well advised will benefit the most from this feature of the Private Residence Relief legislation as they will be able to assess the tax impact of the different choices over time in a way that others may not appreciate.
- 2.42 It is clear that awareness of the nomination rules is far from ideal. Of the 1,200 or so respondents to the OTS Capital Gains Tax online survey, 42% indicated that they have had a second home at some point. Of these second home owners, only 33% indicated that they had submitted a nomination.¹⁴
- 2.43 In addition, the OTS has identified a number of smaller issues with the way the existing nominations regime operates.

'Flipping' properties

- 2.44 It is possible to make a protective nomination within the 2-year time limit and then amend the nomination at any time. The amendment can be backdated from up to two years before it is sent to HMRC. This allows a wide scope for homeowners to 'flip' their nomination between properties depending on their circumstances and the respective value of their homes.

No prescribed format

- 2.45 There is no prescribed format to a nomination. A letter notifying HMRC is sufficient. While not an insurmountable barrier, making what is essentially a binary nomination should not have to require writing a bespoke letter.

Cohabiting couples

- 2.46 Cohabiting couples, who are not married or in a civil partnership, are treated separately for income tax and Capital Gains Tax purposes. In particular they can nominate separate homes as main residences, so can potentially benefit from relief on two properties for the same period.
- 2.47 This clearly can result in disparities, and potentially distortions, in family decision-making. This raises wider issues in the tax system and in society generally, beyond the scope of this report.

Use of nominations to receive relief on a holiday home

- 2.48 The OTS observes that the nominations process can be used to nominate a holiday home or second home, so long as it meets the definition of a residence.
- 2.49 The main home, which may be of much greater in value than the holiday or second home, can be kept until the homeowner dies. As the first OTS report on Capital Gains Tax explored it would then receive a tax-free uplift.

¹⁴ See Annex D, under subheading 'OTS Survey'.

Collectively these rules could result in no Capital Gains Tax being payable on either property.

Short term rental properties as a main home

- 2.50 A short term rental property¹⁵ with negligible capital value for the tenant can meet the definition of a main home and so acquiring one can create a new combination of residences. This includes assured shorthold tenancies. This triggers the need, or ability, to make a nomination which it is easy for those affected to overlook.

Example 3 – renting a second home

Ada owns a family home with her partner in Manchester. She works in Aberdeen and rents a flat to live in during the week. At the weekend, she returns home to Manchester.

The rented flat could result in a new combination of residences. If Ada does not make a nomination it is possible that ‘on the facts’ the flat could be deemed to be Ada’s main home and Private Residence Relief could be lost or restricted on the home that she owns.

- 2.51 The government have removed the time limit in these circumstances so a nomination can be made at any point. This has the effect of reducing the risk of homeowners losing Private Residence Relief on the main home that they own.
- 2.52 However, it is peculiar that a rented home can be deemed to be the home that should receive Private Residence Relief, as it is not possible for the tenant to sell the rented home and realise a gain on which to use the relief.

Conclusions – how the system could be improved

- 2.53 The OTS considers that there is no realistic alternative to a process involving nominations. To remove nominations and require homeowners to decide which of their homes is their main home based on the facts would be challenging for homeowners and administratively difficult for HMRC.

Awareness

- 2.54 The OTS recommends that the government take steps to advance awareness around nominations to create more parity between individuals who have a tax adviser and those who do not receive professional advice. Individuals with a professional adviser are currently more likely to be aware of the rules and accurately predict which property is more likely to appreciate most in value.
- 2.55 One way of increasing awareness would be for the government to require estate agents and conveyancers to distribute information to purchasers of a new home. This information could include HMRC guidance on potential tax charges, nominations and administration requirements such as the UK

¹⁵ The OTS uses the term ‘short term rental property’ to refer to a property in which the tenant does not hold an interest of more than a negligible market value.

Property tax return (and so should be considered alongside recommendation 3).

Nominations on disposal

- 2.56 Alternatively the government could instead consider allowing nominations to be made on disposal.
- 2.57 This would bring the rules into line with the current treatment for individuals who are not UK resident and for individuals who have more than one residence but only one residence with any capital value (as in Ada's case above).
- 2.58 Any change in this area should not create additional opportunities for doubling up on relief – which is available only in very limited circumstances (see paragraphs 2.71-2.73 below). Consideration would need to be given to whether such nominations could allow homeowners to split relief between their homes or whether, for example, one home would need to be chosen to receive relief for the entirety of an available period prior to its disposal.

Administrative improvements

- 2.59 The OTS also suggests that the government consider improving the process for making nominations by allowing nominations to be made through a standard form or letter template. As explored in Chapter 1 this should be done through the new Single Customer Account.
- 2.60 These changes would simplify the practical experience of the 1.4 million people who own second homes¹⁶ when they come to dispose of one of their homes.

Short term rental properties as a main home

- 2.61 The government should also consider whether short term rentals could by default be treated as not being a taxpayer's main home. So where they had two residences, one owned and one rented, the owned one would be considered to be their main home without any need to nominate.
- 2.62 Removing the need to consider short term rentals will prevent adverse outcomes for a small number of taxpayers and remove the need for all those renting second homes from having to make a nomination.
- 2.63 The definition of short term rentals could be aligned with the existing definition used in the legislation to remove the time limit for making nominations for these homeowners, which would include assured shorthold tenancies but not leases with any capital value.

Recommendation 6

The government should review the practical operation of Private Residence Relief nominations, raise awareness of how the rules operate, and in time enable nominations to be captured through the Single Customer Account.

¹⁶ Game of Homes: The rise of multiple property ownership in Great Britain, Resolution Foundation, p7 <https://www.resolutionfoundation.org/app/uploads/2019/06/Game-of-Homes.pdf>

Living away from home

Background – how it works at the moment

2.64 While Private Residence Relief is targeted at owner-occupation, it can be retained if a homeowner lives away from their main home for a period of time, depending on the circumstances and nature of the absence.

2.65 A summary of the kinds of absences which do not affect the amount of Private Residence Relief available is given in the table below.

Table 2.A: Table showing types of absence that do not affect the amount of Private Residence Relief available

Relief	Maximum time away	Requirement to reoccupy	Overlapping relief available
Delay in occupation due to: 1 Delay in selling home 2 Renovation, or 3 Construction	2 years	Yes	Yes
Final period exemption for all main homes	9 months	No	Yes
Final period exemption for individuals who are disabled or resident in a care home	3 years	No	Sometimes
Absence for any reason	3 years	Yes	No
Employed outside the UK	Unlimited	Sometimes	No
Working elsewhere (employed or self-employed)	4 years	Sometimes	No

Source: OTS

Occupational requirements

2.66 An absence can only fall within these reliefs if the homeowner lives in their home at some point and it qualifies as an only or main residence.

2.67 The relief for 'one absence for any reason' depends on the homeowner living in the home both before and after the absence. However, the work-related absence relief rules do not require reoccupation if this is prevented by the homeowner or their spouse's work.

Use of multiple reliefs

2.68 Homeowners can use each of the absence reliefs consecutively which allows those who are well-advised to maximise the Private Residence Relief available despite long periods away from their home. For example, it is possible to live

away from home for an unlimited period (in the case of an absence for employment abroad), to never return, and to still receive full relief.

Soft and hard limits

- 2.69 If the delay in taking up occupation extends beyond 24 months, no Private Residence Relief will be allowed for the delay. Private Residence Relief will be given from the date the individual moves into their home (and it qualifies as a residence).

Example 4 – refurbishment before occupation

Harry bought his home in April 2019 and he chose to carry out major refurbishment work before moving in. Work started straight away but, due to the COVID-19 pandemic, building work was delayed and was not completed until May 2021, when he was able to move into his home.

Private Residence Relief allowed:

April 2019 - May 2021 – No relief due

May 2021 onwards - only or main residence

- 2.70 The limits for the working elsewhere absence and the absence for any reason reliefs create softer cliff edges. Homeowners who are away from their home for longer than the limit are still able to receive relief for the maximum period allowed. Private Residence Relief is only restricted for the time away from home which exceeds the limit.

Example 5 – absence

The Taylors bought their home in June 2010. They occupied it as their only residence until July 2012. In that month they won a lottery jackpot and decided to travel the world. They were away until December 2016 when they returned to their home until they sold it in March 2020.

Private Residence Relief allowed:

June 2010 - July 2012 - only or main residence

July 2012 - July 2015 - 3 years for any reason

July 2015 - December 2016 - No relief due

December 2016 - March 2020 - only or main residence.

Overlap in relief

- 2.71 The absence reliefs at the beginning and end of the period of occupation can enable an overlap in relief. Where there is an overlap it is possible for more than one home to qualify for Private Residence Relief for the same period.

- 2.72 HMRC guidance is explicit that this overlap between residences is permissible and explains that when there is an overlap, a nomination is not required as Private Residence Relief will be available on both residences for the overlapping period.¹⁷

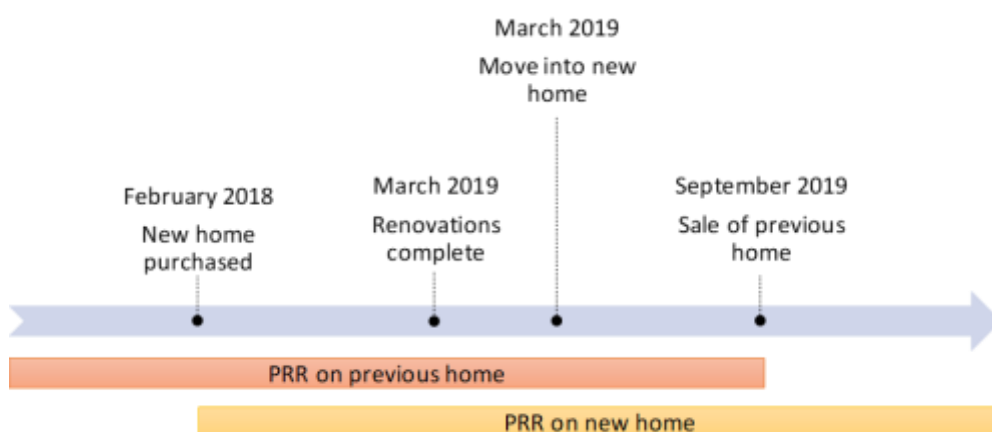
Example 6 – building in the garden

Petal bought a new home in February 2018. The home required extensive refurbishment and Petal remained living in her previous home. In March 2019, after some building delays, Petal moved into her new home.

The sale of Petal's previous home took some time and it was let out for 6 months prior to the sale, which completed in September 2019.

Private Residence Relief is available on both the new and old home during the delay in moving into the new home.

Private Residence Relief is also available on both the new and old home while the old home is let out as this period is less than the maximum final period exemption.



- 2.73 By contrast, for the work-related absence reliefs and the absence for any reason relief, where the homeowner has more than one home, a nomination may need to be made to keep relief on their main home and the rules will prevent a potential overlap in relief.

Job related accommodation

- 2.74 Homeowners such as members of the armed forces, who live in accommodation that is job-related and may also own their own home that they intend to live in in the future, do not need to consider the absence reliefs. They should receive full Private Residence Relief on their home (subject to the other conditions of the relief), even if they never actually live there.

¹⁷ HMRC Capital Gains Tax manual, Private residence relief: relief for two dwelling houses for same period. <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg65013>

Employment

- 2.75 The unlimited permitted absence for being employed abroad is not available to individuals who are self-employed. This is inconsistent with the more limited permitted absence for working away from home which allows both employment and self-employment.

Observations – challenges with this approach

- 2.76 The OTS recognise the value of the absence rules in supporting labour mobility, which was one of the original policy objectives of Private Residence Relief. However, the way the reliefs operate is complex.

Scope of the reliefs

- 2.77 The OTS observes that the absences reliefs are widely drawn and allow generous relief to some homeowners who live away from home for long periods.
- 2.78 The reliefs at the beginning and end of occupation allow for an overlap in relief. This allows up to 2 years and 9 months of relief on two properties at the same time.
- 2.79 The work-related absence reliefs and the absence for any reason relief can be combined together to cover an extended period away from home. In the case of a homeowner living away from home for work (within the UK), relief is available for up to 7 years if the two available reliefs are combined. This can allow a homeowner up to 7 years of tax free growth in the value of a property that is rented out.
- 2.80 The unlimited relief for homeowners who are employed abroad is more generous as it could allow for unlimited tax free growth on a UK property that is rented out. The benefit of the relief is available to anyone who purchases a home in the UK, even if they have only lived in the UK for a short period and subsequently leave permanently for employment elsewhere.
- 2.81 The OTS observes that the unlimited relief for homeowners who are employed abroad covers a wide range of circumstances, some of which may be considered more deserving of relief than others.

Inconsistencies

- 2.82 It is not clear what the rationale is for the different limits. The non-neutrality between the four year limit for working away from home and the unlimited relief for being employed abroad is particularly curious.
- 2.83 It is also not clear why the unlimited absence for working abroad is only available for individuals who are employed and not for individuals who are self-employed. It is curious that employment is deemed to be more deserving of relief than self-employment in this circumstance.
- 2.84 As shown in Table 2.A some absences require reoccupation, others do not.

Cliff edges

- 2.85 The time limits create undesirable cliff edges which can result in two homeowners receiving different treatment even though they have very

similar circumstances. Cliff edges can distort behaviour as homeowners will inevitably try to arrange their affairs to fall on the right side of the cliff edge.

- 2.86 The limit to the delay in taking up occupation can create situations where homeowners narrowly miss out on receiving relief for a delay. Although this is a difficult situation for those homeowners, the OTS understands the need to keep a hard restriction on this relief to limit the situations where Private Residence Relief is available for two homes for the same period.

Conclusions – how the system could be improved

- 2.87 The OTS observes that the government should reflect on whether the ancillary reliefs for living or working elsewhere continue to meet their policy objectives.
- 2.88 For instance, the government could reflect on whether it is intended for unlimited Private Residence Relief to be available to a homeowner who becomes permanently non-UK resident after purchasing a home in the UK. This would enable full relief against the Capital Gains Tax on a residential property.

Keeping pace with modern lifestyles

Background – how it works at the moment

- 2.89 Private Residence Relief is aimed at owner-occupiers and is not generally available to landlords who rent out a home to others. However, there are allowances for homeowners who have an element of commercial use of their home.

Non-residential use

- 2.90 Private Residence Relief is not available for any part of a home that is used exclusively for the purposes of a trade, business, profession or vocation.
- 2.91 Any part of the home that is used mostly for business but is very occasionally used for a non-business or personal purpose is not affected by this. For example, part of a house that is used as a home office would normally be entirely covered by Private Residence Relief.
- 2.92 When there is a part of the home which is used exclusively for business purposes, the capital gain is apportioned between the residential and non-residential parts of the property. Capital Gains Tax is payable only on the amount of the gain attributable to the non-residential part.
- 2.93 HMRC guidance is clear that the exclusive use test is a stringent one and that Private Residence Relief should not be restricted where there is 'some measure of regular residential use'.¹⁸

¹⁸ Capital Gains Manual, Private residence relief: non residential use: part of house used exclusively for business.

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg64663>

Renting out a home

- 2.94 If a home that was previously lived in as a main home is subsequently rented to tenants, Private Residence Relief is not available for the period for which it is let.
- 2.95 When the home is sold, the capital gain is time apportioned between the period for which it was the owner's main home and the period it was let, with adjustments for any permitted absences. Capital Gains Tax is payable on the amount attributable to the period that does not qualify for Private Residence Relief.
- 2.96 If a part of the home is rented to tenants and the homeowner lives in the other part of the home so that there is shared occupation, then Private Residence Relief is restricted. Relief is available only on the amount of the gain attributable to the part of the home that is occupied by the homeowner.
- 2.97 The amount of the gain which does not qualify for Private Residence Relief may nevertheless qualify for lettings relief. Lettings relief is available where there is shared occupation and is restricted to the lower of:
- a) £40,000
 - b) the amount of Private Residence Relief available, and
 - c) the amount of any gain attributable to the letting

Lodgers

- 2.98 If a homeowner takes a lodger into their home, Private Residence Relief is not restricted.
- 2.99 'Where a lodger lives as a member of the owner's family, sharing their living accommodation and taking meals with them, no part of the accommodation is treated as having ceased to be occupied as the owner's main residence, and the exemption is not restricted at all.'¹⁹
- 2.100 In this instance, lettings relief does not apply as full Private Residence Relief is available.

Observations – challenges with this approach

Non-residential use

- 2.101 It is not unusual for people to reconfigure their homes to create dedicated working spaces, and some will have created home offices in their gardens. This is likely to have become more prevalent since the start of the COVID-19 pandemic and is likely to continue.
- 2.102 The OTS has heard that it is widely assumed by taxpayers and their advisers that Private Residence Relief will not be restricted in these circumstances as it is rare for part of the home to meet the exclusive use test.

¹⁹ Statement of Practice 14 (1980)

<https://www.gov.uk/government/publications/statement-of-practice-14-1980/statement-of-practice-14-1980>

- 2.103 There are however two particular ways in which HMRC guidance is unclear about how the use of a home for work impacts the availability of Private Residence Relief. These are:
- 1 the limit on the amount of the home that can be used as an office before Private Residence Relief is restricted
 - 2 the amount of personal use which is sufficient to prevent exclusive business use
- 2.104 On the first point, the legislation provides that if part of a residence is used for the purpose of the owners' office or employment then it should not result in Private Residence Relief being restricted.
- 2.105 However, the guidance²⁰ includes the suggestion that if a substantial part of the home is used as an office then relief should be restricted. No further description is given for what the meaning of substantial is in this context, though the OTS understands that cases in this category are rare.
- 2.106 On the second point, the guidance is clear that the exclusive use test is stringent and says that 'occasional and very minor residential use should be disregarded'.
- 2.107 However, this wording is subjective and could create unnecessary worry for homeowners. The example of a doctor leaving personal items in their surgery which is attached to the family home is given for 'occasional and very minor residential use' but it is not clear how this very specific example can be applied to other circumstances.
- 2.108 The OTS has been told that it is unclear whether home office arrangements would meet the requirements of the legislation without individuals exaggerating the extent of their personal use.

The definition of a lodger

- 2.109 The definition of a lodger in HMRC's guidance requires the lodger to take meals with the family in their family home.
- 2.110 This guidance is over 40 years old and is outdated as it is no longer common for lodgers to share meals with the homeowner. The OTS understands that in practice HMRC are flexible and pragmatic in applying the rules. However, that lack of detail or up to date guidance can cause unnecessary worry.
- 2.111 HMRC guidance also says that while Private Residence Relief is not restricted where there is a lodger, but it may be restricted where there is more than one lodger.²¹
- 2.112 The OTS has heard that limiting full relief to circumstances where there is only one lodger can theoretically preclude the following situations:

²⁰ HMRC Capital Gains Tax manual, Private residence relief: non residential use: part of house used for owner's office/employment

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg64690>

²¹ HMRC Capital Gains Tax manual. Private residence relief: letting: lodger.

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg64702>

- when a home is shared with a couple
- when a home is shared with a single parent and their children
- where multiple rooms are let to children who were previously living under the foster care of the homeowner

Lettings relief

2.113 The changes to lettings relief made by Finance Act 2020 have restricted its use to a very narrow set of circumstances. For lettings relief to apply, the homeowner must let out a part of their home while still occupying the other part of their home and the part that is let must not be entirely separate. Real life examples of this situation are difficult to find but could include a homeowner with a studio apartment in their attic which is let to a tenant.

Conclusions – how the system could be improved

Guidance

- 2.114** The OTS recommends that HMRC should update their guidance across a number of areas (**recommendation 14**).
- 2.115** HMRC's manuals include examples of situations where relief will be restricted. These include the examples of a doctor's office, a public house and a farmhouse. Additional examples should be added to reflect common home working arrangements. It should be clear in the guidance that homeowners can work full time from home, in a home office (including home offices built in the garden) without relief being restricted.
- 2.116** The definition of a lodger in HMRC guidance²² is outdated and HMRC should consider removing the requirement that a lodger must share meals with the family.

Potential legislative improvements

- 2.117** The OTS observes that the government should also consider reviewing the following areas:
- the single lodger limit does not cater for cases such as a foster family letting rooms to multiple foster children after they have left foster care at the age of 18,
 - the law could be updated to ensure all common home working arrangements are excluded from the 'exclusive use' test to reflect the pragmatic approach already taken by HMRC to home offices.

Relationship to Stamp Duty Land Tax

- 2.118** Both Capital Gains Tax and Stamp Duty Land Tax make use of definition of residential property.
- 2.119** Capital Gains Tax does so to establish the permitted area of the garden and grounds surrounding a residence so the extent to which both Private Residence Relief and the higher rates of tax should apply. Stamp Duty Land

²² HMRC Capital Gains Tax manual. Private residence relief: letting: lodger.
<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg64702>

Tax does so to establish whether or not the full extent of the home counts as residential property which also influences the rate applied.

- 2.120 The OTS has heard that the different definitions between the Capital Gains Tax and Stamp Duty Land Tax cause confusion and can produce anomalous results. This is not so much a matter of guidance as a matter of there being different legislative definitions.
- 2.121 There are differences in the situations involved, as Capital Gains Tax needs to consider the history and use of the property over a period of time, and Stamp Duty Land Tax applies at a moment in time. However, it is an area which would benefit from wider consideration.

Chapter 3

Tangible moveable property

Overview

- 3.1 Items of tangible moveable property ('chattels') that are subject to Capital Gains Tax are usually personal possessions. Paintings, items of jewellery, furniture, televisions and antique vases are all chattels but so are some tools and machines used by businesses.
- 3.2 As a broad rule all chattels are subject to Capital Gains Tax except for 'wasting assets' (see below). There is also a specific exemption designed to keep low value disposals of chattels out of the scope of the tax.
- 3.3 Chattels are not specifically captured in the Self Assessment tax return but HMRC estimate that, for the 2017-18 tax year, a total of £15 million in Capital Gains Tax was paid in respect of disposals of chattels, by around 300 taxpayers.¹ This is less than 0.2% of the total Capital Gains Tax yield for that year.

Background – how it works at the moment

Low value chattels

- 3.4 Low value chattels have been exempt from Capital Gains Tax since this tax was first introduced, initially with a £1,000 threshold but with a higher threshold of £6,000 from tax year 1989-90.
- 3.5 Some level of de minimis is essential to ensure taxpayers do not need to make returns on disposals of everyday items. The threshold relates to the proceeds from a sale or the market value of a gift, and is applied per item disposed of, subject to anti-fragmentation rules in relation to the break-up of sets and collections.
- 3.6 Disposals where the acquisition cost and sale proceeds are both £6,000 or less are exempt from Capital Gains Tax entirely and those where they both exceed £6,000 are treated in the usual way.
- 3.7 When an asset that costs more than £6,000 is sold for £6,000 or less, the allowable loss is restricted to the difference between the sale proceeds and £6,000.
- 3.8 When an asset that costs £6,000 or less is sold for more than £6,000, the taxable gain is restricted to the difference between the sale proceeds and

¹ HMRC estimate based on Capital Gains Tax data for 2017-18. Refer to Annex D for further details.

£6,000, multiplied by 5/3. This is called the 'marginal relief' calculation and is demonstrated below.

Example 7 – marginal relief

Martina

Martina buys an antique vase for £1,000. She sells it for £13,000, making a gain of £12,000. Martina's taxable gain is restricted to:

$$\text{Proceeds } £13,000 - £6,000 = £7,000 \times 5/3 = £11,667$$

Martina's gain is £11,667 because the restricted amount is lower than the actual gain.

Marcel

Marcel buys a painting for £4,000. He sells it for £13,000, making a gain of £9,000. Marcel's gain is restricted to:

$$\text{Proceeds } £13,000 - £6,000 = £7,000 \times 5/3 = £11,667$$

Marcel's gain is £9,000 because the actual gain is lower than the restricted amount.

- 3.9 The ways these calculations work means that there is no effect on gains made on disposals for more than £15,000, above which disposals are taxed in the usual way. The overall effect is to prevent a 'cliff edge', as otherwise a disposal for say £6,001 could produce a very different level of chargeable gain from a disposal for £6,000.

Wasting assets

- 3.10 Certain types of chattels known as 'wasting assets' are exempt from Capital Gains Tax. Wasting assets are those which are not expected to last more than 50 years, such as racehorses, clocks, and cars.
- 3.11 Any assets defined as 'plant and machinery' are automatically treated as wasting assets unless they have been used in a trade and capital allowances have been claimed. Even items of plant and machinery that may have a useful life of 50 years or more are classed as wasting assets and exempt from Capital Gains Tax.
- 3.12 One reason for the exemption is that wasting assets are more likely to generate losses than other chattels, so exempting them from Capital Gains Tax protects the Exchequer. This is because, typically, a wasting asset's value is realised through use rather than through onward sale (as with, for example, computer equipment or a washing machine).

Observations – challenges with this approach

Awareness and compliance

- 3.13 One of the main challenges with the taxation of chattels is that of awareness. For tax to be collected, the taxpayer must be aware of their liability and disclose it.
- 3.14 In particular, individuals giving away chattels may not intuitively see the gift as an event that triggers a tax liability, as no money has changed hands.
- 3.15 The OTS has heard from respondents that one barrier to this is the word itself, 'chattels' being considered an outmoded and poorly understood term. That said, the OTS notes that HMRC guidance on chattels generally refers to 'tangible, moveable property', which is clearer.
- 3.16 The OTS has also heard that there is nothing to prompt a taxpayer to consider taxes when disposing of chattels, particularly by way of gift. This includes there being no specific reference to chattels in the main Self Assessment tax return or the Personal Tax Account.

Low value chattels

- 3.17 The £6,000 threshold has been the same since 6 April 1989. Over time, a frozen threshold could result in more disposals of personal possessions being brought into the charge to Capital Gains Tax. However, this is not borne out by the data indicating that approximately only 300 taxpayers declared gains on chattels in the 2017-18 tax year and generally these were substantial transactions, generating a mean Capital Gain Tax liability for each taxpayer of about £50,000.
- 3.18 In practice, the OTS has heard that the marginal relief calculation is an inconvenience because it is mandatory and rarely achieves a better result for the taxpayer.
- 3.19 At most, and in very exceptional circumstances, the gain can be reduced by £6,000 and a saving of £1,200 of Capital Gains Tax made.² To obtain this maximum saving, all three of the following circumstances are required:
- the taxpayer disposes of an asset for £6,001 that had an acquisition value of nil
 - the taxpayer's other gains for the same tax year exceed the Annual Exempt Amount
 - their income exceeds the higher rate band
- 3.20 Given the small number of taxpayers who pay Capital Gains Tax on chattels and the relatively large average liability³, it is unlikely that the marginal relief calculation would benefit many taxpayers in practice. It is still less likely that it would create a material benefit, given the value of the potential saving has

² The full £1,200 saving would only happen if the proceeds were just over the £6,000 and the base cost was nil or negligible, such that a gain of approximately £6,000 was reduced to a negligible amount.

³ The mean Capital Gains Tax liability on chattels only per taxpayer of about £50,000 compares with a mean average Capital Gains Tax liability on all assets per taxpayer of £32,000.

effectively reduced since 1989 as, although the value of chattels has not grown by inflation, the value of money has.

3.21 Some respondents have suggested to the OTS that the chattels exemption is not high enough and should be increased to as much as £15,000. There are two potential justifications:

- this would cover all the gains currently covered by the marginal relief calculation, and could facilitate removing this calculation
- the present day value of £6,000 in 1989, when the exemption was last increased, is approximately £15,000

3.22 However, the OTS notes there are counter arguments for both of these points. Firstly, simply raising the exemption and removing the marginal relief requirement creates a 'cliff-edge', as described above, where there is not one currently.



3.23 Secondly, although inflation has affected the value of money since 1989, this is not reflected in the prices of typical chattels, as better technology reduces the cost of many household items. It is still unusual for a household to own a single taxable item of tangible moveable property worth more than £6,000. (Note that cars are specifically exempt from Capital Gains Tax and other 'wasting assets' are also exempt, as described below.)

Wasting assets

3.24 It is not clear that the boundary between what is taxable and what is not makes sense, nor that it is understood by many.

3.25 Equally, those that do understand it may be able to exploit it. This is particularly evident in the treatment of certain items classed as plant and machinery, which can be exempt from Capital Gains Tax even if they are held as investments, by contrast with seemingly similar items which are taxable as shown in Table 3.A below.

Table 3.A: Table showing some similar items that are either taxable or exempt

TAXABLE 	EXEMPT 
Jewellery	Watches
Antique furniture	Antique clocks
Acoustic guitar	Electric guitar

Source: OTS

3.26 The definition of plant and machinery relies on case law but, broadly speaking, automated or mechanical components, such as a watch mechanism, are the key differentiator. In cases where an asset like a Swiss watch may be expected to outlast a 50-year useful life and increase in value over time, this can result in counter-intuitive outcomes.

Conclusions – how the system could be improved

- 3.27 While it is challenging to recommend material changes in this area the OTS considers the following may be fruitful areas for the government to explore.

Awareness and compliance

- 3.28 The Self Assessment tax return and accompanying guidance could include a question about whether a taxpayer has sold or made a gift of any personal possessions worth over £6,000 and then add the description ‘tangible, moveable property’ with examples (avoiding the use of the word ‘chattels’).
- 3.29 Alternatively, the more general notes accompanying the Self Assessment tax return might replicate the longer definition of chargeable assets contained in the specific notes to the Capital Gains Tax pages.

Low value chattels

- 3.30 The OTS does not consider there is a case for changing the low value chattels rules significantly. Although they seem dated, they continue to serve the administrative and simplification purpose of keeping most taxpayers and their domestic affairs outside of the scope of Capital Gains Tax, as demonstrated by the low frequency and high value of taxable disposals.
- 3.31 The marginal relief rules are complex and inconvenient in practice, with evidence suggesting they are rarely applied in practice. However, the OTS does not consider this evidence is sufficient to warrant recommending its withdrawal, particularly in the light of the cliff-edge that it would create.
- 3.32 The government may wish to explore further the impact of marginal relief.

Wasting assets

- 3.33 The OTS had considered, in Chapter 4 of its first report on Capital Gains Tax, whether it might be preferable to exempt personal possessions generally but only taxing certain types of asset (such as jewellery, artwork and precious metals) with a value over a threshold. This could potentially be simpler to understand and taxpayers would only need to be aware of what is taxable and when, as opposed to understanding a general rule with many seemingly complex exceptions.
- 3.34 However, following further work and researching international comparisons and markets in ‘tax-free investments’, it has become apparent that such an approach could open up distortions, creating markets for whatever asset types could make good investments that were not within the scope. It does not appear to solve the jewellery versus watches problem but would simply push the boundary elsewhere.
- 3.35 There is also a risk to the Exchequer in extending the scope of Capital Gains Tax to volatile markets which can create significant allowable losses as well as gains that are potentially capable of being realised strategically.
- 3.36 That said, the government could consider whether, in particular, the definition of machinery is appropriate, as it gives automatic exemption under the wasting assets rule to potentially valuable assets that may in fact be appreciating and for which there is a market, such as watches. This has the

potential to distort investment decisions as it can result in non-neutral tax outcomes for similar investments.

Chapter 4

Divorce and separation

Background – how it works at the moment

- 4.1 Married couples or civil partners can transfer their assets between each other without triggering an immediate Capital Gains Tax charge. This recognises the extent to which many such couples' finances are integrated and that their assets likely to be effectively jointly owned.
- 4.2 The tax mechanism for handling such transfers is known as 'no gain no loss' which means that the base cost of the asset transferred from the previous owner is inherited by the new owner. For example, if a spouse transferred a buy to let property originally acquired for £100,000 but currently worth £200,000 to her husband she would not have to pay tax at that time but he would be required to use her base cost of £100,000 if he later decided to sell.
- 4.3 Separating couples continue to get the same treatment as married couples in their (tax) year of permanent separation and transfers can continue to be made on a 'no gain no loss' basis for the rest of that year. Evidence about the permanence of their separation can be derived from a court order or formal deed of separation or more usually from the specific circumstances of the particular couple.
- 4.4 However, if the transfer is made in the next tax year then the transfer is treated as taking place at market value and there could be a capital gain even if no cash has changed hands. So, if a couple separate on 4 April 2022 they would only have until 5 April 2022 to transfer their assets without triggering a tax charge.
- 4.5 There were just over 91,000 divorces in 2018.¹ For the 2018-19 tax year, HMRC analysts identified £8 million of Capital Gains Tax that had been paid by fewer than 300 taxpayers citing divorce or separation in the free text on their Self Assessment tax returns. These figures should be considered indicative only as customers are not required to declare divorce as part of their returns so the data may be incomplete.²

¹ Divorce, ONS

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce>

² HMRC data 2018-19. See Annex D.

- 4.6 In apportioning assets in the event of a divorce a court would consider the mix of assets in the round, including any potential tax liabilities that may arise if they are sold.

Interaction with Private Residence Relief

- 4.7 The rules on separation also need to be considered in the context of Private Residence Relief.
- 4.8 Married couples and civil partners are treated as inheriting the occupation history of their spouse if a home is transferred from one to the other.
- 4.9 So if a taxpayer buys a property, occupies it on their own, gets married, lives there with their spouse and transfers half of their property to them, and they sell; then both parties qualify for Private Residence Relief in relation to the period the taxpayer occupied it before the transfer, as well as the period in which they subsequently lived in the property together.
- 4.10 If the couple separate and one party moves out then the spouse that moves out may still receive Private Residence Relief if:
- they transfer their share of the property to their former spouse, or
 - it's their final 9 months of ownership (as outlined in Chapter 3 on main homes)
- 4.11 However, as illustrated in the example below the non-occupying spouse would not continue to qualify for Private Residence Relief if they sold the house to a third party.

Example 8 – one spouse moves out before property sale

Simon and Sarah separate, and Simon moves out of their shared home on 30 March 2018. Sarah continues to live there.

They retain their shares of the home until 30 March 2019, at which point it is sold to a third party to fund the divorce settlement, resulting in a capital gain.

Sarah gets full Private Residence Relief as she lived there for the full period.

However, Simon does not get full Private Residence Relief. He gets relief until 30 March 2018 as he was living there and relief for his final 9 months of ownership. But he does not get relief for the 3 months between 31 March 2018 and 30 June 2018.

Alternatively, if Simon had instead sold his share of the property to Sarah within 9 months of moving out he would get full Private Residence Relief.

Observations – challenges with this approach

- 4.12 All the respondents to the OTS Call for Evidence commenting on this issue agreed that the length of time given to separating couples was inadequate.
- 4.13 Having separated, the point at which people are ready to address their finances varies considerably. There are several legitimate reasons why people

do not resolve their finances within the tax year in which separation occurs. Moreover, to prevent a Capital Gains Tax charge, they do not only need to reach agreement, but to actually transfer the assets.

- 4.14 In addition, the point at which people separate can be nebulous. The OTS understands that family lawyers routinely agree between themselves the most appropriate date of permanent separation for their clients. And the OTS has heard examples of people seeking to evidence a later date of separation after the tax implications of a particular separation date were explained to them.
- 4.15 Some respondents felt that this meant that the rules were unfair to those without professional advisers as they would be less likely to successfully navigate the rules.
- 4.16 In practical terms these issues are most significant for people in two particular circumstances.
- 4.17 First, a homeowner selling their family home to a third party after separation may lose out on full Private Residence Relief if they no longer live there. As noted in Chapter 1 in relation to the UK property tax return this can present a particular challenge for separating couples who may not receive their share of the money to pay the tax until the divorce settlement is finalised.
- 4.18 Second, there may be Capital Gains Tax charges on share reorganisations in family businesses. Again, there might not be cash immediately available to pay the tax and raising extra money may be difficult.
- 4.19 The government guidance on separation and divorce³ does not contain any upfront practical information on tax and does not link directly or indirectly to the more helpful HMRC helpsheet on Capital Gains Tax for civil partners and spouses.⁴
- 4.20 The government's proposed changes to divorce⁵ could speed up the overall process of getting a divorce, which in some situations could limit opportunities to agree a mutually acceptable date of separation.

Conclusions – how could the system be improved

- 4.21 The OTS considers that the current approach is unsatisfactory and recommends that the government should look at extending the 'no gain no loss' window to the later of:
- the end of the tax year at least two years after the separation event

³ Separating or divorcing: what you need to do guidance, Get a divorce guidance.

<https://www.gov.uk/separation-divorce>, <https://www.gov.uk/divorce>

⁴ HS281 Capital Gains Tax civil partners and spouses (2021)

<https://www.gov.uk/government/publications/husband-and-wife-civil-partners-divorce-dissolution-and-separation-hs281-self-assessment-helpsheet/hs281-capital-gains-tax-civil-partners-and-spouses-2021>

⁵ Family Procedure Rule Consultation

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945018/fprc-Consultation_Paper_and_Covering_Letter.pdf

- at any reasonable time in accordance with a financial agreement approved by a court or equivalent event in Scotland on how a couple should rearrange their affairs
- 4.22 This change would give people the time they need during what can already be very difficult circumstances.
- 4.23 The average time between applying for and securing a divorce in England and Wales in 2020 was 53 weeks. Separating and starting the legal process of divorce are not the same thing but the OTS expects that two years after the separation event will cater for most situations, though there is scope for a reasonable debate about the appropriate time horizon.
- 4.24 As financial agreements may be relevant for a third of divorces⁶ the additional flexibility of a non-time limited financial agreement is also likely to be helpful. Even if the court rules within the two-year time horizon there may be good reasons why the transfer does not take place until later - such as retaining the family home until children have left.
- 4.25 There is a precedent for this approach in how divorce and separation are catered for by the Stamp Duty Land Tax rules.⁷ It does create the theoretical risk that some people postpone their financial agreement for tax reasons but the OTS does not expect tax to be a significant factor in most situations.
- 4.26 The slightly different approach for Scotland is necessary to facilitate a similar outcome as the courts are not automatically involved in the divorce process there.
- 4.27 This change could potentially cost the Exchequer much of the £8 million of Capital Gains Tax currently paid by divorcing couples each year described in paragraph 4.5,⁸ but as it does not remove the need to pay Capital Gains Tax on a subsequent disposal the long-term revenue implications will be smaller.
- 4.28 Any change would need to be made with sufficient notice and communication in order to ensure that individuals and courts fully understood the implications of new rules before applying them. The OTS understands that this should not result in unfair outcomes for one party or the other as a court will consider tax liabilities in deciding how any assets are allocated.

Interaction with Private Residence Relief

- 4.29 To support the recommendation above, an extended time horizon could also apply in relation to eligibility for Private Residence Relief. This would ensure the relief continued to apply to both parties until the later of these two criteria has been met.

⁶ Law Society Call for Evidence response

⁷ Stamp Duty Land Tax: transfer ownership of land or property guidance, If you transfer property because of divorce, separation or the end of a civil partnership.

<https://www.gov.uk/guidance/sdlt-transferring-ownership-of-land-or-property#if-you-transfer-property-because-of-divorce-separation-or-the-end-of-a-civil-partnership>

⁸ HMRC data 2018-19. See earlier note and in Annex D.

- 4.30 This could preserve Private Residence Relief for a former spouse in a situation where they retained an interest, but a court prevented the family home from being sold until any children had reached 18. It would also create more parity between those transferring their share of the property to their former spouse (a situation already catered for) and those selling to a third party.
- 4.31 To ensure that neither party obtains Private Residence Relief on two properties (say the former family home and a new flat) at the same time it would be possible to require the taxpayer to nominate in line with the changes to the nomination rules proposed in Chapter 2. This would mean that the extended time horizon could not be manipulated to provide more relief than if the couple had remained together.

Divorce toolkit

- 4.32 In addition, it would be helpful if the government could produce an integrated divorce toolkit for separating couples and courts looking to regulate their affairs to use. The 'Registering a death' toolkit could serve as a helpful starting reference point as tax issues are embedded into this.⁹ At the very least the existing general guidance on divorce should link to the (more helpful) tax specific guidance.¹⁰

Recommendation 7

The government should extend the 'no gain no loss' window on separation to the later of:

- the end of the tax year at least two years after the separation event
- any reasonable time set for the transfer of assets in accordance with a financial agreement approved by a court or equivalent processes in Scotland

⁹ Register the death guidance

<https://www.gov.uk/after-a-death>

¹⁰ <https://www.gov.uk/government/publications/husband-and-wife-civil-partners-divorce-dissolution-and-separation-hs281-self-assessment-helpsheet/hs281-spouses-civil-partners-divorce-dissolution-and-separation-2016>

Chapter 5

Business issues

Deferred proceeds: Capital Gains Tax

Background – how it works at the moment

- 5.1 Deferred proceeds arise where an asset is sold and payment of a proportion of the sale price is delayed for a period of time, which may be dependent on a future event. Deferred proceeds most often arise on the sale of an unincorporated business (such as a sole trader or a partnership), unlisted shares or of land.
- 5.2 There are some circumstances where the proceeds on the sale of businesses and land are taxed as income rather than as capital gains. However, this chapter focuses on the taxation of the capital receipt of deferred proceeds in relation to the sale of unlisted shares. These issues equally apply in relation to the capital receipt of deferred proceeds on any disposal.
- 5.3 Gains on the sale of unlisted shares totalled £27.8 billion for tax year 2017-18 (which was almost half of the gains subject to Capital Gains Tax).¹ A large proportion of these relates to sales of shares in private companies, on which the proceeds can be received in several different ways.
- 5.4 The way the payment of the proceeds is structured affects how much Capital Gains Tax is payable and when. This chapter explores the main alternatives and their differing tax effects.
- 5.5 An example of deferred proceeds is where a company is sold for an upfront amount of cash with further proceeds paid over a number of years. The proceeds may be a combination of cash and other assets such as shares in the buyer's company. In addition, a company can be sold for an uncertain price that depends on future events.
- 5.6 There are often good commercial reasons for using the different options outlined above.
- 5.7 For instance, if a buyer and seller cannot agree on a sale price, proceeds that are dependent on future profits provide an opportunity to reflect the true value of the company. Or the purchaser may not have the cash required to buy the company outright and be dependent on the future profits to buy out the previous owner.

¹ HMRC Capital Gains Tax statistical tables, Table 7. See Annex D.

- 5.8 In relation to the 2018-19 tax year, HMRC identified around 1,400 individuals who may have had to calculate Capital Gains Tax where the proceeds may have been deferred. Collectively they had a total liability of £240 million in that tax year although the amount they paid may be revised up or down over the coming years.²
- 5.9 If the change from Entrepreneurs' Relief to Business Asset Disposal Relief is factored in, being a reduction in the amount taxed at 10% from £10 million to £1 million, this figure would increase to £320 million. There is uncertainty in this analysis as taxpayers are not required to declare deferred consideration in a consistent way in Self Assessment tax returns and so these figures should be considered indicative only.³
- 5.10 In the context of the challenging economic conditions stemming from the COVID-19 pandemic it is possible that the use of deferred proceeds on a sale of a company could become more common in future.

Simple company sales

- 5.11 To calculate the capital gain a taxpayer needs to know the price paid on acquisition (which may be nominal if the company was set up by the taxpayer) and the proceeds, which they can then use to pay the tax.

Example 9 – known proceeds

Owen sells his company for £1.2 million to be paid in cash. Owen set up the company himself without incurring any allowable costs.

Owen is taxed on the capital gain of £1.2 million.

- 5.12 In this example the proceeds were cash, but this isn't always the case. Owen could have potentially received other assets, such as shares, which he may be required to hold for a specified period of time and therefore he cannot readily realise the cash. All non-cash proceeds are subject to tax just as cash proceeds are.

Company sales where the proceeds are deferred

- 5.13 Another possibility is that the sale proceeds are paid over a number of years. Where the value of the deferred proceeds is known they are often referred to as 'ascertainable'. In this situation Capital Gains Tax is due on the full proceeds at the time of the sale regardless of when the proceeds are handed over.

² HMRC data 2018-19. See Annex D.

³ HMRC data 2018-19. See Annex D.

Example 10 – known proceeds deferred

Owen sells his company for £1.2 million to be paid in cash. £1 million will be paid upfront and £200,000 will be paid in 2 years' time.

Owen is taxed on the gain of £1.2 million at the time of the sale. No allowance is made for the delay in paying over the final £200,000 and all of the tax is due at the same time.

- 5.14 If Owen ultimately receives a lower amount (say if the buyer defaulted), he can make a claim for an adjustment to the original tax calculation to obtain a tax repayment. A taxpayer has four tax years to do this from the time it becomes certain that the full agreed proceeds will not be paid. The final position is that Owen is ultimately taxed on what he receives.

Instalment Option

- 5.15 There is a facility to pay the tax in interest-free instalments where known proceeds are to be received over a period of time exceeding 18 months which ends after the normal due date of payment of the Capital Gains Tax.
- 5.16 An application must be made to HMRC to agree the payment arrangements, which can never be over a period of more than eight years. It is not necessary for the taxpayer to show that they will have difficulty in paying the tax. There is no data available, but the number of applications is thought to be no more than a handful.
- 5.17 This is separate from the normal Time to Pay Arrangements which are available for taxpayers who are unable to pay taxes owed. If the amount owed is more than £30,000, then the payment terms will need to be agreed with HMRC and are based on the taxpayer's ability to pay and therefore their specific financial circumstances will be reviewed. Interest also then applies to the late payment of the tax.
- 5.18 One reason the instalment option for deferred proceeds is rarely used in practice is the mechanics of how this works. On the initial proceeds, and each time the taxpayer receives a payment, they normally have to pay 50% of the amount received towards the tax due until it has been paid in full. As the rate of Capital Gains Tax is either 10% or 20% this limits the effective application of this option as illustrated in the example below.

Example 11 – instalment option

Owen's upfront proceeds are £1 million.

Owen is entitled to Business Asset Disposal Relief, so the Capital Gains Tax payable, assuming the Annual Exempt Amount has been used up elsewhere, is £140,000 (£1 million at 10% plus £200,000 at 20%).

The tax cannot be paid under the instalment option as it is less than 50% of the initial proceeds of £1 million. In his circumstances, the instalment option

would be available to Owen only if the initial proceeds were less than £280,000.

- 5.19 Furthermore, the Capital Gains Tax due under the instalment option may have been paid well in advance of the full proceeds ultimately being received as illustrated in the example below.

Example 12 – instalment option

Poppy's proceeds are £2 million payable in eight equal annual instalments of £250,000 each.

Poppy is entitled to Business Asset Disposal Relief, so the Capital Gains Tax payable, assuming the Annual Exempt Amount has been used up elsewhere, is £300,000 (£1 million at 10% plus £1 million at 20%).

On the receipt of each instalment, Poppy pays over £125,000 in tax. By the time the third instalment has been received, Poppy has paid all the Capital Gains Tax due. So, although the proceeds are paid over a period of eight years, the tax is being paid over only three years.

Company sales where proceeds are deferred and unknown

- 5.20 Sometimes the proceeds include a future payment determined by an agreed formula based on future profits, which cannot be known at the time of the sale. This is often referred to as an "earn-out" and for tax purposes is known as "unascertainable" proceeds.
- 5.21 In this situation Capital Gains Tax is due both on the upfront cash proceeds paid and the present estimate of the value of the proceeds that will be received in the future. This is because Capital Gains Tax is payable on proceeds whether they are received in the form of money or money's worth. So, depending how the overall proceeds for the sale are structured, the taxpayer may be paying tax on an element of the proceeds that they have not yet received.
- 5.22 The figure put on the estimated proceeds is the value of the right to receive the future proceeds.⁴ A professional valuation is normally required to determine this figure. When the right is later exchanged for cash this disposal is a taxable event in its own right - it is not related to the original share disposal. The base cost is the original valuation of the right and the proceeds the amount of cash received. There will be multiple such taxable events if the proceeds are received over a number of tax years.

⁴ This approach to handling such rights is the result of the 1980 *Marren v Ingles* case.

Example 13 – unknown proceeds deferred

Louise sells her company for £1 million plus 10% of the profit in the next 12 months to be paid in two years' time.

If the future proceeds are estimated to be valued at £200,000, then Louise is taxed on total proceeds of £1.2 million in the year of disposal.

There is a second Capital Gains Tax event when Louise receives those future proceeds in a subsequent tax year.

If Louise in fact receives £250,000, she has made a further capital gain of £50,000 which is taxable in the year of receipt. If Louise receives only £150,000, she has made a capital loss of £50,000. In the case of a loss, Louise can elect to carry back the loss against the original gain and she will receive a tax repayment.

- 5.23 If the future proceeds are never received, then a tax repayment can be made but this requires an election to carry back the loss to the original year of disposal to receive the tax refund. This is an exception to the normal rules, which do not allow a capital loss to be carried back. In relation to the 2018-19 tax year, indicative analysis suggests there were around 80 taxpayers who had deferred proceeds and used losses against an earlier year's capital gain.⁵ Ultimately, this election means that a taxpayer will pay tax on what they receive.
- 5.24 If the deferred proceeds are received before the filing date for the tax return for the tax year of sale then strictly a taxpayer should file their return using the value of the right to the future proceeds and then adjust the position in the next tax year when the cash is received. However, it is likely that a taxpayer will in practice just file on the basis of the actual amount received.
- 5.25 Based on a sample of tax returns the majority of transactions are adjusted within four years of the initial disposal.⁶

Company sales where the proceeds are deferred and paid in other assets

- 5.26 Non-cash proceeds are taxed in the same way as cash proceeds, as noted above. However if the proceeds are deferred and payable in the form of specified assets, such as new shares in the buyer's company or in return for a formally constituted debt owed to them, the taxpayer can normally postpone the taxation of the deferred proceeds until the disposal of the new shares or settlement of the debt, subject to certain conditions being satisfied. Where the amount of this type of deferred proceeds is not known, this also means there is no need to value the right to the future proceeds.
- 5.27 A formally constituted debt is commonly referred to as a loan note, loan stock, debenture or (as in this report) a corporate bond. If the use of a corporate bond is to be effective as a means of deferring the point at which

⁵ HMRC data 2018-19. See Annex D

⁶ HMRC data 2018-19. See Annex D

the proceeds are taxed it is generally accepted that the debt needs to have a life of at least six months⁷ - which means that there will be a delay in receiving that part of the proceeds.

- 5.28 The tax treatment of a corporate bond is different depending on whether or not it is a qualifying corporate bond. See paragraph 5.63 below.

Example 14 – deferred proceeds paid in corporate bonds

If Owen's or Louise's future proceeds are payable to them as corporate bonds, and not cash, then regardless of whether the amount is known or unknown, they will be taxed only on the upfront cash payment of £1 million in the tax year of the disposal.

A further tax charge will arise only when the additional cash is ultimately received on the redemption of the corporate bond.

Interaction with Business Asset Disposal Relief

- 5.29 If the proceeds involve a deferral in the charge to tax, the taxpayer often loses eligibility to Business Asset Disposal Relief on the deferred amount.
- 5.30 If, for example, they receive shares in the buyer's company they would need to hold at least 5% of the shares and be an employee or director for any gain on a subsequent sale to qualify.
- 5.31 Or if, for example, proceeds relating to an earn-out are received in the form of corporate bonds, then the Capital Gains Tax event for those bonds is at the time they are redeemed.
- 5.32 In examples 9, 10 and 13 above, Owen and Louise could claim Business Asset Disposal Relief on the proceeds of £1.2 million that they are taxed on in the year of sale of their shares.
- 5.33 If, as in example 13, Louise received further proceeds of £250,000, Business Asset Disposal Relief would not apply to the additional £50,000 as the tax is payable on the redemption of the corporate bonds.
- 5.34 In example 14, Business Asset Disposal Relief would apply only to the upfront initial proceeds of £1 million. An election could be made so that Business Asset Disposal Relief could apply to the deferred proceeds of £200,000, but that involves being taxed on this amount upfront, even though no cash has been received, which may take away one of the purposes of having the deferred proceeds paid in corporate bonds.
- 5.35 There are also other, separate, issues relating to Business Asset Disposal Relief (specifically in relation to the timing of disposals on retirement). These issues are covered later in this chapter (see paragraph 5.82).

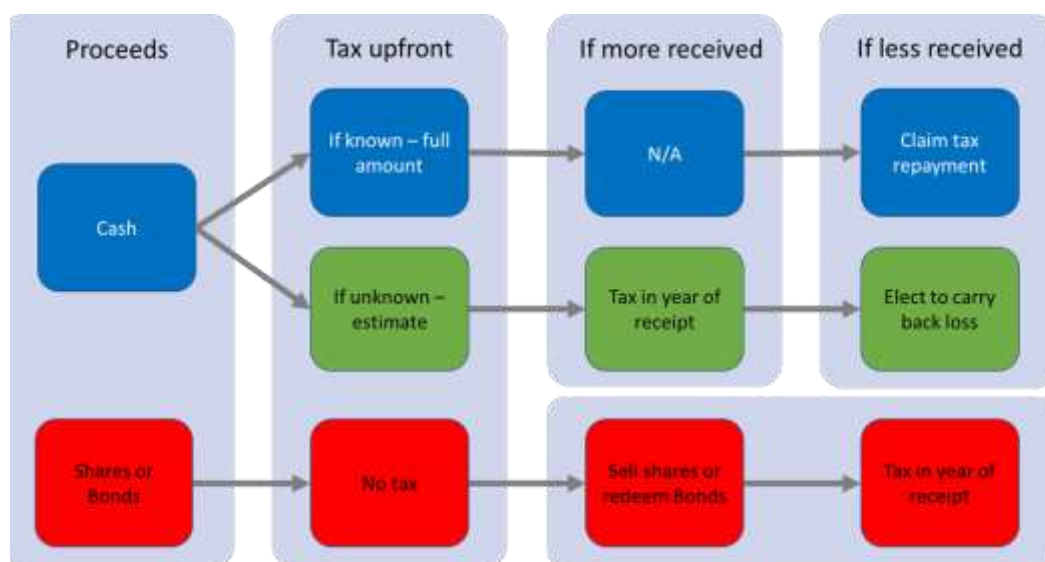
⁷ Capital Gains Manual, Share exchange: examples.

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg52570>

Overview

- 5.36 The following diagram illustrates the different tax treatments which can arise, depending on how the proceeds are structured on the sale of a company.

Diagram 5.A: Diagram showing different tax treatments on the sale of a company



Source: OTS

- 5.37 The flow chart shows that however the proceeds are structured on the sale of a company the taxpayer is ultimately taxed on the actual final cash proceeds that they receive. The difference is largely in when the tax is paid.

Observations – challenges with this approach

- 5.38 There are a number of ways in which the existing situation is unsatisfactory:

It is very hard for taxpayers to understand and the process is not intuitive

- 5.39 The OTS has heard that understanding the tax rules in this area is beyond even the most sophisticated non-professional taxpayers. This is as much the product of the mechanics of the process as the outcome. Even when the outcome is broadly tax neutral there are unnecessary steps that take time and increase costs for taxpayers. For instance, if the amount received is lower than was estimated either an election has to be made to carry the loss back against the original gain, or a claim made for a tax repayment.

It can result in tax charges on proceeds before they are received

- 5.40 The rules can result in tax being charged upfront on cash that has not yet been received and may never be received.

The facility to pay the tax in instalments is ineffective

- 5.41 This facility is rarely used in practice as it requires a bespoke agreement and the instalments are not appropriately matched to the way the proceeds are received. In cases of hardship, Time to Pay Arrangements would be more flexible and effective.

The required valuation of future proceeds can be challenging

- 5.42 The valuation of a right to receive future proceeds can be complex and requires professional input. This can be subjective and is inevitably based on a range of factors. Coming to a conclusion takes time and money and seems unnecessarily complicated if the actual proceeds may be known within a short to medium time frame and available to be used instead.

It can create uneconomic distortion

- 5.43 The differences in tax treatment can be distortive, by pushing taxpayers away from arrangements that make most commercial sense.

Reliefs apply inconsistently

- 5.44 Some of the issues outlined above do not arise if the future proceeds are payable in shares or corporate bonds as the tax is paid on receipt of the cash. However, Business Asset Disposal Relief is often not available even where it would have been if the company had been sold for a known amount of cash or an unknown amount of cash (at least on the value of the right to the unknown cash).

Conclusions – how the system could be improved

- 5.45 There is no single way forward that avoids all these pitfalls without creating further issues. However, there are number of approaches that the government could take to improve the position so that the tax position is the same for all taxpayers however their proceeds are paid, and so that they pay tax on the actual proceeds on receipt of the cash rather than having to make future claims or elections to correct the position.

Capital gains on a receipt basis

- 5.46 Capital Gains Tax could be charged on a 'receipts' basis, the tax being paid when the proceeds of sale are actually available or received and therefore quantifiable. This would have a number of benefits:
- the tax would be paid out of the cash that the taxpayer has received without any need to make a claim or an election if less is received than anticipated
 - there would be no need to value the right to future proceeds which can be complex and expensive
 - there would be no need to structure a disposal using corporate bonds to defer the payment of tax on proceeds that have not been received. So the tax treatment of examples 10 and 13 would mirror example 14.
- 5.47 The government would however have to consider the Exchequer implications, as there would be a delay in payment of Capital Gains Tax. There could also be a reduction in overall tax revenue due to the spreading of the gain across multiple tax years, as more than one Annual Exempt Amount will be available - though taxpayers could structure this under the current rules, say, by partial redemption of corporate bonds.

Detailed policy design

- 5.48 If the government were to make changes in this area then consideration would need to be given to the following issues:
- 5.49 The computation of the Capital Gains Tax due on the overall transaction. For example, whether all of the base cost should be allocated to the initial proceeds, which would reduce the first tax payment, or be proportionally spread across each receipt. The latter would be fairer to the Exchequer but would create additional complications as multiple part disposal computations (and valuations of the remaining proceeds) would be required.
- 5.50 The position if the taxpayer subsequently becomes non-UK resident, dies or assigns (or sells) the right to the future proceeds to another person. These events could trigger the immediate payment of the tax based on the known or unknown proceeds. There are similar provisions already in the legislation to tax gains on which gift hold-over relief has been claimed where the person in receipt of the asset leaves the UK.
- 5.51 A restriction of this approach to sales to third parties where there are deferred proceeds to prevent avoidance where, say, there is a gift so there are no proceeds, or the proceeds are other non-cash assets. Furthermore, the OTS suggests applying a maximum period over which the tax can be paid, of say, five years.
- 5.52 Consideration should also be given to ensuring that future proceeds payable in forms other than cash (such as corporate bonds) do not compromise the availability of Business Asset Disposal Relief. To ensure the relief does not then apply to any increase in the value of shares attributable to the new company owner, such an extension of this relief could apply only to the deferred gain arising on the redemption of corporate bonds and shares where the shareholders does not otherwise qualify for the relief.

Wider issues

- 5.53 If the government considered such changes in the tax treatment of deferred proceeds in relation to the sale of a business then it should also consider the application of those changes to other transactions where there are deferred proceeds, such as in relation to disposals of land.
- 5.54 In addition, the government should consider removing the existing facility to pay the Capital Gains Tax in instalments on deferred proceeds. This would save taxpayers and their advisers from having to explore what is usually a dead end in practice.

Recommendation 8

The government should consider whether Capital Gains Tax should be paid at the time the cash is received in situations where proceeds are deferred, such as on the sale of a business or land, while preserving eligibility to existing reliefs.

Debts

Background – how it works at the moment

- 5.55 Where an amount is owed to an individual this is an asset for Capital Gains Tax purposes, and when it is repaid there is a disposal of that asset for the amount received.
- 5.56 Where one person has just lent money to another and this is repaid this is known as a 'simple debt'. Simple debts are specifically outside of the scope of Capital Gains Tax so that neither a taxable gain nor an allowable loss can arise. This applies only when the debt remains in the hands of original lender.

Example 15 – simple debt

Alice lends £20,000 to Betty.

If Betty repays £18,000 to Alice, Alice will not make an allowable loss as this is a simple debt.

If Alice sells the debt to Charlie for £17,000 and Betty repays £18,000, Charlie is taxed on the gain of £1,000 as it is now a second-hand debt and not exempt from Capital Gains Tax.

- 5.57 The reasoning behind this is that when an individual makes a loan, they will generally be repaid either the same amount or less; it is unlikely they will be repaid more. By making them exempt, there is no allowable loss if the funds repaid are less than the original amount. However, second-hand simple debts are within the charge to Capital Gains Tax as they are often acquired with the expectation of making a profit.
- 5.58 If a debt is not a simple debt, then it is within the scope of Capital Gains Tax and is generally known as a 'debt on a security'. This is not the same as a secured debt (that is, a debt secured on an asset such as a mortgage).

Type of debt

- 5.59 Whether the debt classified as a simple debt or a debt on a security is not always obvious.
- 5.60 A debt on a security is a debt with added characteristics which generally enable it to be realised at a profit or a loss. These characteristics are based on case law and include, for example, that the debt is marketable, held as an investment, capable of being realised at a profit, and is at a commercial rate of interest.⁸ Not all of these characteristics need to be present and whether the debt is marketable is considered to be the main one. Just because a debt is documented in writing doesn't necessarily mean it is a debt on a security.

⁸ The leading case is *W T Ramsay Ltd v CIR* 54TC101.

- 5.61 The criteria must be applied to determine the type of debt and therefore whether or not it is within the charge to Capital Gains Tax.

Corporate bonds

- 5.62 Corporate bond is a generic term for debts or securities issued by a company to raise finance.
- 5.63 There are different tax treatments depending on whether the corporate bond is what is termed a qualifying or a non qualifying corporate bond. Qualifying corporate bonds can generally be described as a debt which is on normal commercial terms, is expressed in sterling and where there is no provision for conversion or redemption into another currency. Qualifying corporate bonds are exempt from Capital Gains Tax whereas those that are non qualifying are taxable. A similar exempt status applies to gilts which are issued by the government.
- 5.64 This distinction is only relevant for Capital Gains Tax purposes as any debts within the charge to Corporation Tax are subject to a different treatment.
- 5.65 As discussed in paragraphs 5.26 and 5.27, the proceeds on the disposal of a company can include corporate bonds. When corporate bonds form part of the proceeds this can defer the tax on that part of the proceeds until the bonds are redeemed and the cash received.
- 5.66 Where the bonds issued are qualifying, their exempt status applies in such a way that the gain deferred from the earlier disposal is triggered on redemption, with any gain or loss attributed to the qualifying corporate bond itself not being within the scope of Capital Gains Tax. This can create an anomaly if the buyer cannot pay the funds due on the bond, for example where the company has gone bankrupt.

Example 16 – qualifying corporate bond

Peter sold his company to Beta Limited for £500,000 realising a gain of £100,000. This is not immediately chargeable to tax as the proceeds will be paid in the form of qualifying corporate bonds in 2 years' time.

Beta Limited is later put into liquidation, and Peter will not in fact receive the £500,000.

On the liquidation there is a deemed disposal of the qualifying corporate bond and Peter's gain of £100,000 becomes taxable, even though he has not received any proceeds.

This tax charge does not arise if the qualifying corporate bond is given to a charity before the liquidation.

- 5.67 Although non qualifying corporate bonds are within the charge to Capital Gain Tax it is considered that their tax treatment is generally favourable as, where they are issued on the sale of a company, deferred gains would not be triggered in the situation illustrated in example 16.

- 5.68 To ensure non qualifying status, the conditions for qualifying status must not be met. One way of achieving this is to include in the formal documentation for the bond a provision that it can be redeemed in a foreign currency or to allow for additional corporate bonds to be issued. Such legal provisions generally have no other purpose.

Relief for irrecoverable debts

- 5.69 Where an individual has made a loan to a trader which is a simple debt, any loss would not normally be allowable. However, there is a specific relief which can allow an individual to claim a capital loss on a debt, the main conditions being that the monies lent are used wholly for the purposes of the trade and all or part of the monies loaned have become irrecoverable.
- 5.70 For example, if a loan of £500,000 to a trading business becomes irrecoverable this relief gives the taxpayer a capital loss to offset against other capital gains.

Observations – challenges with this approach

- 5.71 There are a range of specific challenges with the way debts currently operate.

Type of debt

- 5.72 The OTS has heard that it can be a complex exercise for professionals to determine whether a debt is a debt on a security as there is no definition in the legislation, and it is determined by case law. HMRC guidance outlines the characteristics required based on the case law but is limited in scope and provides few examples.⁹ It is possible to submit a non-statutory clearance to HMRC where it is difficult to determine which type of debt it is.

Corporate bonds

- 5.73 As illustrated, there are often disadvantages to having qualifying corporate bonds as part of the proceeds for a business sale. Securing the intended Capital Gains Tax status of corporate bonds is unduly complex and requires the insertion of provisions in the legal documentation which generally have no other purpose other than to ensure the preferred tax treatment. The insertion of these provisions is confusing for taxpayers, as well as professionals such as commercial lawyers.

Relief for irrecoverable debts

- 5.74 Relief is not available if there was no realistic chance of the debt being repaid when it was initially made (for example if the business was in such difficulties at the time of the loan that it was irrecoverable from the outset). HMRC guidance specifically directs its officers to consider this if there is a small time gap between the loan being made and the loss claim.¹⁰

⁹ HMRC Capital Gains Manual.

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg53422>

¹⁰ HMRC Capital Gains Manual.

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg65951>

- 5.75 The OTS has heard that this can be a subjective assessment by HMRC of the commercial position at the time the loan was made, and of whether the taxpayer was reasonable in their view that it was recoverable. The taxpayer is in a position that they have lost funds and may not have certainty about whether tax relief will be available.

Conclusions – how the system could be improved

- 5.76 The OTS has a number of suggestions for improving the taxation of debts.

Corporate bonds

- 5.77 The OTS recommends that it should be possible for the choice about the tax status of a corporate bond to be made by the inclusion of a permanent irrevocable upfront provision in the legal documentation for the bond.
- 5.78 This would avoid the need to insert complex clauses which normally have no other purpose and make it difficult for the parties concerned to know which type of corporate bond they have, and avoids any mistakes being inadvertently made.
- 5.79 If no provision is made the default position should be that the corporate bond is qualifying and therefore exempt from Capital Gains Tax. This outcome is more intuitive for taxpayers and reflects that there are wider uses of corporate bonds beyond company sales.

Type of debt

- 5.80 HMRC should consider improving their guidance on when a debt is within the charge to Capital Gains Tax by including examples that cover complex borderline characteristics and outlining the issues that have arisen when a non-statutory clearance has been submitted (**recommendation 14**).

Relief for irrecoverable debts

- 5.81 HMRC should consider improving their guidance about when it will be considered that relief is not permitted on the basis that it was not reasonable for the taxpayer to consider a debt was recoverable at the time the loan was made. The guidance should include relevant case studies of situations which are definitely within the rules to bring further clarity for taxpayers (**recommendation 14**).

Recommendation 9

The government should consider enabling an irrevocable provision in the documentation for a corporate bond to specify that it is subject to Capital Gains Tax, and for the absence of such a provision to mean that it is exempt.

Timing issues in relation to Business Asset Disposal Relief on retirement

Background – how it works at the moment

- 5.82 As set out in the OTS's first Capital Gains Tax report, some form of Capital Gains Tax relief for disposals on retirement has always been available since Capital Gains Tax was introduced. Initially this took the form of Retirement

Relief, later overtaken by Taper Relief, Entrepreneurs' Relief and Business Asset Disposal Relief.¹¹

- 5.83 Respondents to the Call for Evidence have highlighted a specific issue relating to the timing of the disposal of business assets on retirement where the date of cessation does not naturally fit with the disposal of the assets.
- 5.84 The legislation specifies that where at the time a business ceases there is a disposal of one or more business assets, Business Asset Disposal Relief may be claimed as long as the disposal is made within the three year period beginning with the date of cessation.

Observations – challenges with this approach

- 5.85 However, the OTS has been told that this requirement to sell when or after the business ceases may not reflect some common retirement scenarios. For example, a farming business could be sold but the farmer may continue to harvest existing crops after the sale, or a retail business may need to continue for some time after the retail premises are sold. However, a strict interpretation of the legislation could lead to the relief being forfeited if trading continues after exchange of contracts for the sale of a business.
- 5.86 The specific awkwardness of the timing of business asset disposals in relation to Entrepreneurs' Relief (now Business Asset Disposal Relief) used to be covered by a formal HMRC concession; however, this has been withdrawn.¹²
- 5.87 Despite the reassurance given by HMRC in published correspondence with the Institute of Chartered Accountants in England and Wales,¹³ the OTS has been told that to mitigate the risk of losing the relief, some businesses are seeking other practical 'ways round' the legislation, such as the use of cross (put and call) options between vendor and prospective purchaser.

Conclusions – how the system could be improved

- 5.88 HMRC should include more detailed examples in their manuals about how they interpret the legislation in certain situations where the date of cessation is unclear to help and reassure farming businesses and others looking to retire over a period of time (**recommendation 14**).
- 5.89 In particular, it would be helpful if the interpretation set out in the open correspondence referred to above could be more clearly confirmed within HMRC's own guidance manuals.

¹¹ OTS Capital Gains Tax Review: Simplifying by design.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935073/Capital_Gains_Tax_stage_1_report_-_Nov_2020_-_web_copy.pdf

¹² Extra Statutory Concession D31 was declared obsolete in January 2004. It read: "For the purposes of section 163 and 164, and Schedule 6 TCGA (sections 69 and 70 and Schedule 20 FA 1985) (Capital Gains Tax retirement relief) the Inland Revenue are prepared to accept the date of completion as the date of disposal where, pending completion, business activities continue beyond the date of unconditional contract. This treatment applies for all purposes of Capital Gains Tax retirement relief where the date of disposal is relevant."

¹³ Entrepreneur's Relief – Practical Points, Chartered Accountants in England and Wales, p9.
<https://www.icaew.com/-/media/corporate/archive/files/technical/tax/taxguides/taxguide-1-12-er-final-at-25-jan-12.ashx>

Chapter 6

Investor issues

Enterprise investment schemes

Background – how it works at the moment

- 6.1 The Enterprise Investment Scheme and the Seed Enterprise Investment Scheme are intended to provide support for growth investment in start-up and early-stage companies by giving generous tax reliefs to investors who subscribe in cash for new shares in those companies. The objective of the reliefs is to encourage medium term investment into higher-risk trading companies that might otherwise struggle to raise capital through conventional bank finance.
- 6.2 Since the Enterprise Investment Scheme first started in 1994, more than 31,365 companies have received investment through the scheme and over £22 billion of funds have been raised. The Seed Enterprise Investment Scheme was launched in the 2012-13 tax year and since then more than 12,040 companies have received investment, raising over £1 billion of funds.¹
- 6.3 In the 2018-19 tax year there were 34,145 Enterprise Investment Scheme and 7,480 Seed Enterprise Investment Scheme investors claiming tax relief totalling £1,409 million.²

Economic implications

- 6.4 Although investing in early-stage companies is very high risk, with a high chance of failure, many successful companies (including household names such as Gousto, Money Dashboard³ and Bloom & Wild⁴) have used enterprise investment schemes as part of their early-stage funding. As, despite the risks, there is an opportunity for an investor to make a

¹ Enterprise Investment Scheme, Seed Enterprise Investment Scheme and Social Investment Tax Relief statistics: May 2020. This does not include investors claiming through PAYE or those who didn't claim Income Tax relief.

<https://www.gov.uk/government/statistics/enterprise-investment-scheme-seed-enterprise-investment-scheme-and-social-investment-tax-relief-statistics-may-2020>

² Enterprise Investment Scheme, Seed Enterprise Investment Scheme and Social Investment Tax Relief statistics: May 2020. This does not include investors claiming through PAYE or those who didn't claim Income Tax relief.

³ <https://www.cityam.com/eis-hall-of-fame/>

⁴ <https://mindfulinvestor.co/stories/bloomwild/>

substantial capital gain on a successful investment, the Capital Gains Tax exemption is a key relief for many investors.

- 6.5 A 2017 report by PricewaterhouseCoopers LLP, the Centre for Social and Economic Research and the Institute for Advanced Studies for the European Commission found that tax incentives for venture capital and business angel investment generates a number of positive macroeconomic benefits, such as job creation and productivity gains.⁵
- 6.6 The OTS understands that the benefits of enterprise investment schemes may be particularly important in the current economic climate, where new start-up businesses should be encouraged and also where existing early-stage businesses recovering from the effects of COVID-19 will need new sources of funding.⁶

Eligibility

- 6.7 Both the Enterprise Investment Scheme and the Seed Enterprise Investment Scheme have intentionally restrictive eligibility criteria and require specific clearance from HMRC that the criteria are met.
- 6.8 In exchange they provide generous Income Tax relief when the investment is made, provided that the eligibility criteria continues to be met for a further period of at least three years, together with complete exemption from Capital Gains Tax where shares are disposed of after this time and the Income Tax relief has not been reduced or withdrawn.
- 6.9 The Capital Gains Tax exemption flows from the Income Tax treatment: it is not available unless Income Tax relief has been claimed and relief given.
- 6.10 The Enterprise Investment Scheme currently has a 'sunset clause' and investments after 5 April 2025 will not be eligible for relief. This date can be amended by Treasury order.

Observations – challenges with this approach

- 6.11 The OTS has heard from several respondents to the Call for Evidence that some features of the rules are overly limiting or cause practical problems for genuine applicants. One experienced member of the tax profession called them 'elephant traps that seem more designed to help generate fees for advisers than to block misuse'.
- 6.12 There have been many legislative changes to the enterprise investment schemes over the years and although HMRC have comprehensive guidance,

⁵ Effectiveness of tax incentives for venture capital and business angels to foster the investment of SMEs and start-ups 2017, PricewaterhouseCoopers LLP, Center for Social and Economic Research, & Institute for Advanced Studies, produced for the European Commission, p9.

https://ec.europa.eu/taxation_customs/sites/taxation/files/final_report_2017_taxud_venture-capital_business-angels.pdf

⁶ 40% of businesses said that their turnover had decreased from a sample taken mid-March 2021, Business insights and impact on the UK economy: 8 April 2021, ONS
<https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/bulletins/businessinsightsandimpactontheukeconomy/8april2021>

there is no doubt this is a complex area to navigate – although in part this is to prevent abuse of what are significant reliefs.

- 6.13 The OTS has heard that the impact of this is to deter individuals and companies from using the schemes, potentially damaging take up and holding back investment from start-up companies. As the OTS pointed out in the Business Lifecycle report ‘digitisation and relaxation of legislative inflexibilities could also contribute to faster turn-arounds, which in turn would better enable companies to attract venture capital’.⁷
- 6.14 The OTS has identified a number of specific areas that regularly cause concern and which, if addressed, would better enable the relief to achieve its policy objectives. These areas include:
- short deadlines for issuing shares
 - interaction of the re-investment reliefs with Business Asset Disposal Relief
 - the rules not keeping pace with modern commercial practices
 - a cumbersome application process
 - the link between Income Tax relief and Capital Gains Tax relief

Deadlines for issuing shares

- 6.15 Currently, shares in companies that qualify for enterprise investment schemes have to be issued when, or shortly after, any funds are received. If payment for the shares is even one day late, the whole investment is ineligible for tax relief.⁸ This can collapse deals and deter people from using the schemes - perhaps simply because of a timing delay within the banking system which is beyond investors’ control.
- 6.16 While it is important to ensure a direct link between a company raising funds and issuing new shares, requiring everything to happen on the very same day is commercially unreasonable.
- 6.17 The OTS has heard of several instances where investors have been denied tax relief on this basis and it is a particular problem for those without access to expensive specialist tax advice - for example early-stage start-up companies using the Seed Enterprise Investment Scheme.

Interaction of reinvestment reliefs with Business Asset Disposal Relief

- 6.18 Investors using the schemes who make capital gains on unrelated assets and reinvest those gains into their Enterprise Investment Scheme or Seed Enterprise Investment Scheme shares, can claim relief on those gains.
- 6.19 One particular aspect of the reinvestment reliefs differs depending on whether relief is claimed in relation to reinvestments into Enterprise Investment Scheme shares (where the original gain is deferred until a specified event occurs, such as the shares being sold), or into Seed Enterprise Investment Scheme shares (where some or all of the original gain is

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699972/OTS_Business_Lifecycle_report_final.pdf

⁸ This strict interpretation follows decided cases, such as *Blackburn v Anor* (2009)

conditionally exempt and can be revived in some circumstances, such as the sale of the shares within the first three years).

- 6.20 With Enterprise Investment Scheme shares, if Entrepreneurs' Relief or Business Asset Disposal Relief was available on the original deferred gain, equivalent relief is still available if or when that deferred gain is brought back into charge.
- 6.21 By contrast, a revived gain under the Seed Enterprise Investment Scheme can no longer benefit from Business Asset Disposal Relief, even if it would have originally qualified for that relief (or for Entrepreneurs' Relief).

Modern commercial practices

- 6.22 The OTS has been told that the requirements of enterprise investment schemes are so strict that many modern commercial practices can cause the schemes to fail.
- 6.23 There is, however, a tension between what may appear to be restrictive requirements and the need to ensure that enterprise investment schemes are not being exploited – for example the OTS has heard that some companies have devised investment strategies which require only very minimal investment of, say, £1 with the aim of the investor simply getting the Capital Gains Tax relief rather than, as is the policy intention, providing the company with financial support.

Application process

- 6.24 The current process for applying to HMRC for approval that the schemes criteria have been met - or for 'advance assurance' that the criteria are likely to be met - is quite cumbersome.
- 6.25 The application forms themselves are difficult to complete online as, although they can be completed on screen, there is no scope for saving partly completed forms. This can be burdensome, as the forms require quite detailed information, but until each page of the form is accessed it is not possible to tell what information will be needed.
- 6.26 The Seed Enterprise Investment Scheme is intended for very early-stage companies with a maximum overall investment of £150,000 and yet the information required for that scheme is substantially the same as for the Enterprise Investment Scheme (where investment limits are much higher). This can be onerous and expensive for these early-stage companies as they will find it difficult to complete the forms without help from an adviser.
- 6.27 Improving the functionality of the forms and better linkage to HMRC guidance would simplify the clearance and application processes. As just one example, although the advance assurance instructions include a very comprehensive and useful checklist of required documentation, including links to relevant HMRC guidance, neither the EIS1 or SEIS1 forms (the compliance forms which must be completed after the shares have been issued by the company) have similar supporting comprehensive checklists.

Link between Income Tax relief and Capital Gains Tax relief

- 6.28 One specific requirement of the enterprise investment schemes exemptions is that Income Tax relief must have been claimed and been given on all or part of the original investment. If it is not - perhaps because the claimant had an Income Tax loss so there was no need for them to claim the relief, or the investment was relatively small so it was thought not worth claiming, then there is no Capital Gains Tax exemption when the shares are sold.
- 6.29 The exemption is also unavailable or only provides partial relief where the Income Tax relief originally attributable to the shares has been reduced or withdrawn due to either the company's or the investor's failure to continue to meet the qualifying conditions during the minimum three year qualifying holding period.
- 6.30 This mechanism was built into the design of enterprise investment schemes on the basis that the investor's qualifying status would be tested at the point of investment, with this, rather than the occasion of the later disposal, being the trigger point for any HMRC compliance work.
- 6.31 Additionally, as Income Tax relief is only given on the basis of various qualifying conditions continuing to be met for the qualifying holding period, the logic is that if the upfront Income Tax relief has been given on the investment and has not been reduced or withdrawn it would demonstrate that the investment met the purposes of the scheme and that the Capital Gains Tax exemption would be due.
- 6.32 However, it is an odd outcome for an individual to be denied Capital Gains Tax relief if they did not have a liability to pay Income Tax when they first made that investment. In some cases this can be addressed by forgoing a portion of the personal allowance (although this can be an administratively difficult process for the taxpayer), but this would not be a solution if the investor had no income or if all of the investor's income is fully covered by income tax losses.

Conclusions – how the system could be improved

- 6.33 The OTS has identified a number of technical and administrative improvements to address the issues identified above.
- 6.34 Any of these changes could encourage more taxpayers to use the enterprise investment schemes. In practical terms this could mean that more investment reaches early-stage trading companies which might otherwise struggle to access funding. This is likely to be especially important as the economy recovers from the effects of COVID-19.

Flexibility for taxpayers

- 6.35 The OTS considers that the government should provide taxpayers with a measure of flexibility in relation to non-substantive technical issues which risk invalidating claims where the substance of the transaction meets the policy objectives of the relief.

- 6.36 The following are examples of areas which the government and HMRC should consider addressing, through a combination of legislative and administrative changes.

Deadlines for issuing shares

- 6.37 It would be particularly helpful to allow a short period of grace between a company receiving funds and issuing the shares.

Interaction of the reinvestment reliefs with Business Asset Disposal Relief

- 6.38 Consideration should be given to aligning the treatment of revived deferred gains for the Enterprise Investment Scheme and revived Seed Enterprise Investment Scheme reinvestment relief gains so that Business Asset Disposal Relief can be claimed on the latter as well as the former, as there seems to be no underlying reason for this mis-match.

Modern commercial practices

- 6.39 While the OTS recognises that strict criteria are essential for this very valuable relief, it would be helpful if the requirements are reviewed on an on-going basis to ensure they can be reasonably met in practice and do not unduly restrict the company's commerciality.
- 6.40 Equally, the government should continue to monitor if the reliefs are being used for investments that are not in keeping with their original intention. If there is clear evidence of exploitation through investments with a nominal value, the government may wish to consider reinstating a minimum investment requirement (until the 2012-13 tax year the Enterprise Investment Scheme had a minimum investment value of £500).

Application process

- 6.41 In addition, HMRC should improve the functionality of the forms and their guidance in consultation with professional bodies and adviser groups. The current forms and guidance, despite recent improvements, are still confusing and are a barrier to accessing the relief, particularly for unadvised very early-stage companies (**recommendation 14**).

Link between Income Tax relief and Capital Gains Tax relief

- 6.42 The government should explore whether Capital Gains Tax relief should still be accessible by the investor even when Income Tax relief has not been claimed. This would smooth out an odd outcome for taxpayers who have made Income Tax losses – which could be a particular issue in the current COVID-19 economic situation.
- 6.43 The OTS recognises that giving Income Tax relief is a convenient trigger point for HMRC's compliance work and that the enterprise investment schemes' Income Tax and Capital Gains Tax reliefs are currently structurally combined, so this is not a simple proposal to deliver.
- 6.44 However, alongside the necessary legislative changes, this could be facilitated by an adaptation to the existing claim process (such as a separate stand-alone notification, or information about the investment being included in Self Assessment tax returns even where no tax relief is available). The new Single Customer Account, outlined in Chapter 1, could also be used to notify

such information to HMRC. This would be particularly helpful for investors not in Self Assessment, and who do not complete tax returns.

Recommendation 10

The government should review the rules for enterprise investment schemes, with a view to ensuring that procedural or administrative issues do not prevent their practical operation.

Foreign Assets

Background – how it works at the moment

- 6.45 When a UK resident taxpayer buys or sells a foreign asset their acquisition cost and proceeds are converted into sterling at the respective point in time in order to calculate the gain. This means that their actual gain or loss in the foreign currency asset is ignored for Capital Gains Tax purposes.
- 6.46 HMRC statistics suggest that approximately one in ten people in the UK have foreign assets.⁹

Example 17 – no change in foreign currency, gain in sterling

Richard owns a second home in France which he bought for €120,000 in January 2012. The exchange rate then was £1: €1.2 so the sterling equivalent was around £100,000. Richard sells the house for what he paid for it being €120,000 in January 2021 when the exchange rate was £1: €1.1, the sterling equivalent being about £109,000.

Richard has made a taxable gain of £9,000 even though the value of the property in France has not increased.

- 6.47 As illustrated in Example 17, the current system means that a tax liability can arise when there is a gain as a result of foreign currencies appreciating against sterling. Equally a taxable loss could arise due a weakening of sterling against the foreign currency as illustrated in Example 18.

Example 18 – no change in foreign currency, loss in sterling

Richard's second home is instead in Australia which he bought for AUD150,000 in January 2012. The exchange rate was £1: AUD1.50 so the sterling equivalent was £100,000. Richard sells the house for what he paid for it being AUD150,000 in January 2021 when the exchange rate was £1: AUD1.75, the sterling equivalent being £85,715.

Richard has made an allowable loss of £14,285 even though the value of the property in AUD has not decreased.

⁹ No Safe Havens 2019: responding appropriately

<https://www.gov.uk/government/publications/no-safe-havens-2019/no-safe-havens-2019-responding-appropriately>

- 6.48 Furthermore, if foreign currency is spent on the foreign asset to improve it, and these improvements are reflected in the asset's final value, then these amounts must also be converted at each date that the expenditure was incurred.

Foreign currency bank account

- 6.49 Unlike the treatment for most foreign assets outlined above, there is specific Capital Gains Tax exemption for foreign exchange gains or losses that arise from movements of money in a foreign currency bank account.
- 6.50 Without this exemption, when funds are added to the bank account or removed from it, there would be a disposal for Capital Gains Tax purposes. The exemption was introduced to remove the complexity and number of the computations that would otherwise be required. The outcome is that as well as capital gains not being within the charge to tax, capital losses are not allowable.
- 6.51 When individuals acquire foreign assets, they may use a foreign bank account to pay for them. For these individuals, although they are not taxed on the movement of funds within that bank account, they do have to determine the sterling equivalent when working out the acquisition cost of the foreign asset when they come to sell it.

Observations – challenges with this approach

Taxation of exchange rate gain

- 6.52 These rules can create odd outcomes for taxpayers if they are reinvesting their proceeds in other foreign property. For example, if Richard used the proceeds of his second home to buy another similarly priced second home in another part of France he may reasonably wonder why he has to pay tax in the UK at all when he has not made a gain in France. Richard has tax to pay purely as a result of the exchange rate movement while he held the asset.
- 6.53 The outcome may be different to those outlined above if, say, the proceeds from the sale of the foreign asset were immediately converted back to sterling for investment in the UK or another foreign asset in a different country. This is illustrated in the following examples.

Example 19 – gain in foreign currency, loss in sterling

Kiran invests £10,000 in US shares in March 2020 and received shares worth \$12,800 (exchange rate £1: \$1.28). Kiran sells the shares in March 2021 when they have increased in value to \$13,600. Kiran wants to invest in the UK so converts the funds and receives £9,785 (exchange rate £1: \$1.39).

Although the US shares have increased in value by \$800 (£575), Kiran does not have a taxable gain under the current system but an allowable loss of £215.

- 6.54 As illustrated in example 19, although the US stock has increased in value, as Kiran has converted the funds back to sterling, she has made a real loss. If

Kiran was to reinvest the funds into another US stock, she would not suffer this financial loss.

Example 20 – no change in foreign currency, gain in sterling

Carys invests £10,000 in Australian shares in March 2020 and received shares worth AUS\$19,600 (exchange rate £1: AUD\$1.96). Carys sells the shares in March 2021 for the same price and receives the sterling equivalent of £10,950 (exchange rate £1: AUD\$1.79).

Although the value of the shares has not moved, Carys is taxed on a gain of £950.

- 6.55 If Carys did not convert the funds to sterling and reinvested in the same currency, then she would not make a financial gain.
- 6.56 As illustrated the current system seeks to tax the movement in the exchange rate as well as the change in value of the asset.

Foreign currency bank accounts

- 6.57 It is inconsistent to tax exchange rate fluctuations arising from foreign assets but not those from foreign currency bank accounts.
- 6.58 In the examples 17, 18 and 20, neither Richard nor Carys would have a taxable gain or an allowable loss for Capital Gains Tax purposes were it not for the exchange rate movement.

Conversion

- 6.59 This approach to foreign assets can be complicated as it requires historical exchange rate conversions of both the acquisition cost and, if any, enhancement expenditure.
- 6.60 In practical terms, it is not clear from HMRC guidance whether the taxpayer should use the actual sterling amounts paid, is required to use HMRC's official currency exchange rates or indeed any other published exchange rate guide. If a taxpayer were to use HMRC official exchange rates these are difficult to find in the guidance and for dates prior to 2014 taxpayers are referred to the National Archives.
- 6.61 If a taxpayer operates solely in sterling and makes a payment to acquire the foreign asset, or to enhance the value of the property, then it should be relatively simple for them to record the sterling amount debited, though they will still need to review historical bank statements from the time when the asset was acquired or funds spent to improve it.

Conclusions – how the system could be improved

- 6.62 On balance the OTS considers it would generally be simpler if the calculation of gains and losses arising on the disposal of a foreign asset were carried out in the foreign currency, and then converted to sterling at the exchange rate on the date of disposal.

6.63 The mechanical implications of this are demonstrated below.

Implications for examples 17 to 20

Example 17 - Richard would no longer have a taxable gain as he has not made a gain in the local currency.

Example 18 - Richard would no longer have an allowable loss as he has not made a loss in the local currency.

Example 19 - Kiran would now be taxed on £575 as she has made a gain in the foreign currency.

Example 20 - Carys would no longer have a taxable gain as she has not made a gain in the local currency.

- 6.64 This change would remove the need to determine the sterling equivalent of the acquisition cost and of any subsequent enhancement expenditure. This would be simpler for those taxpayers who operate foreign bank accounts and more intuitive for those reinvesting into foreign assets in the same country. For instance, Richard in example 17 would be free to continue investing in French assets without paying tax on a house that had not risen in value in the currency that he may largely operate in.
- 6.65 It would also bring the position into line with the treatment with foreign currency bank accounts where taxpayers are not taxed on currency gains.
- 6.66 It would not add extra complexity for those individuals operating only in sterling although it could sometimes produce less intuitive outcomes for those individuals. For instance, if Richard regularly bought and sold both UK and foreign assets and made a large sterling gain on his French second home which he then used to reinvest in UK assets then it could appear anomalous to exempt him from paying UK Capital Gains Tax.
- 6.67 The OTS accepts that in exploring this the government will need to consider the number of people affected and the relative balance of winners and losers as well as the Exchequer implications.

Recommendation 11

The government should consider whether gains or losses on foreign assets should be calculated in the relevant foreign currency and then converted into sterling.

Chapter 7

Land and property issues

Agricultural issues

Background – how it works at the moment

Introduction

- 7.1 Farming businesses are often small rural businesses run by unincorporated traders and partnerships. They tend to hold land and related assets long term, passing on the business from one generation to the next. Statistics from the Department for Environment Food & Rural Affairs show that in 2019 72% of the total land in the UK was used for farming, employing a labour force of approximately 476,000 people.¹
- 7.2 Generally, the same Capital Gains Tax rules apply equally to farming as to other businesses. However one particular area of interest is that land used in a trading business is often treated more favourably for tax purposes than land held for investment purposes (often described as ‘let’ land). This has particular implications for diversified farming businesses where a farmer holds both types of land, or the use made of the land changes over time.
- 7.3 Several respondents to the OTS Call for Evidence explained that these rules have particular implications for modern farming businesses, which are diversifying to maximise business opportunities.² However, in so doing they may inadvertently jeopardise important Capital Gains Tax or Inheritance Tax reliefs, which are seen as especially important for this sector in supporting longer term business investment, restructuring and succession.
- 7.4 Some representatives of such farming businesses have been consistently arguing that the tax system should be modernised to help farmers to address these and other diversification issues. One suggested approach to such

¹ Farming Statistics Final crop areas, yields, livestock populations and agricultural workforce At June 2019 – United Kingdom, Department for Environment Food & Rural Affairs, p7.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865769/structure-jun2019final-uk-22jan20-rev_v2.pdf

² Country Land & Business Association, Single Rural Business report, 2020.
https://www.cla.org.uk/sites/default/files/Rural%20Business%20Unit%20Report%20FINAL_%20%2804%29.pdf

modernisation is presented by the Country Land & Business Association in their single 'Rural Business Unit' paper.³

Environmental policy issues

- 7.5 The UK's recent departure from the EU will lead to significant changes as the common agricultural policy, which has for decades provided direct support to agricultural businesses across the EU, will be replaced with domestic agricultural policies in each of the devolved nations of the UK.
- 7.6 In England, direct agricultural support payments will be phased out over a transitional period between 2021-2027, with a new system of payments introduced to support environmental goals. These changes will form part of the government's wider long-term plan for environmental improvement.
- 7.7 To help meet the objectives of its '25 Year Environment Plan',⁴ the government is offering financial incentives to English agricultural landowners through its new 'Environmental Land Management Scheme',⁵ which provides for a contractual mechanism between the government and rural landowners for the delivery of public goods, such as wildlife and habitat, clean water and air, climate change mitigation, landscape and heritage, in addition to other support such as farm productivity and sustainable farming payments.
- 7.8 In Scotland, Wales and Northern Ireland, governmental financial support is being offered through separate environmental schemes from each devolved administration.⁶
- 7.9 The OTS has been told that it is not yet clear exactly how some of these changes could affect the tax position of rural businesses, including their trading status for Income Tax purposes and their eligibility for Capital Gains Tax and other tax reliefs. This is understandable as the detailed policy design of these environmental schemes has not yet been finalised.

³ Country Land & Business Association, Single Rural Business report, 2020.
https://www.cla.org.uk/sites/default/files/Rural%20Business%20Unit%20Report%20FINAL_%20%2804%29.pdf

⁴ A Green Future: Our 25 Year Plan to Improve the Environment, Department for Environment Food & Rural Affairs, p10.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf

⁵ The Path to Sustainable Farming: An Agricultural Transition Plan 2021 to 2024, Department for Environment Food & Rural Affairs, p6.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954283/agricultural-transition-plan.pdf

⁶ Written Statement: Publication of the Agriculture (Wales) White Paper
<https://gov.wales/written-statement-publication-agriculture-wales-white-paper>;
Scottish Rural Development Programme.
<https://www.mygov.scot/scottish-rural-development/>;
Environmental Farming Scheme (EFS) Northern Ireland.
<https://www.daera-ni.gov.uk/topics/rural-development/environmental-farming-scheme-efs>

Rollover Relief in compulsory purchase situations

- 7.10 In normal circumstances, Rollover Relief allows the gain arising on the sale of a qualifying business asset to be deferred where the proceeds are reinvested into another qualifying business asset in the same or an ancillary trade.
- 7.11 For these purposes, land which farmers occupy for their own trade will qualify for relief, but land they rent out ('let' land) will not usually qualify. This reflects the wider approach of the tax system, which treats trading assets more generously than investment assets.
- 7.12 There is an exception to this rule where land is compulsorily purchased. Here the party from whom the land is purchased can replace that land (like for like) without incurring a tax charge, so, in these circumstances, a gain arising on the sale of 'let' land can be rolled over, but only into new land, rather than into (say) new buildings on land already owned.
- 7.13 This new land must be purchased within the period of one year before to three years after the date of disposal, though HMRC can extend this timeframe in appropriate circumstances.

Observations – challenges with this approach

Diversification

- 7.14 Several respondents to the OTS Call for Evidence explained that the different rules for trading and investment activities have challenging implications for modern farming businesses, as modern farms increasingly diversify to maximise economic and business opportunities.⁷ That is because they may inadvertently jeopardise important Capital Gains Tax or Inheritance Tax reliefs. The OTS were told that these reliefs were seen as especially important for this sector as they supported longer term business investment, restructuring and succession.
- 7.15 Some representatives of such farming businesses have argued that the tax system should be modernised to help farmers to address these and other diversification issues. One suggested approach to such modernisation is presented by the Country Land & Business Association in their single 'Rural Business Unit' paper.⁸

Environmental policy issues

- 7.16 Several representatives of farming businesses who the OTS spoke to expressed concern that particular changes in land use, such as some of those set out in certain Environmental Land Management schemes, could jeopardise their eligibility for Capital Gains Tax reliefs.

⁷ The future farming and environment evidence compendium - September 2019 edition, Department for Environment Food & Rural Affairs, p15.

<https://www.gov.uk/government/publications/the-future-farming-and-environment-evidence-compendium-latest-edition>

⁸ Country Land and Business Association, Single Rural Business report, 2020, p1-2.

https://www.cla.org.uk/sites/default/files/Rural%20Business%20Unit%20Report%20FINAL_%20%28004%29.pdf

- 7.17 For example, for Income Tax and Capital Gains Tax purposes the trade of farming is defined as “the occupation of land wholly or mainly for the purposes of husbandry”. While it is expected that many aspects of the Environmental Land Management scheme and equivalent devolved policies are likely to fall within the meaning of “husbandry”, there is a concern that a few of the more passive activities envisaged under the scheme may not.
- 7.18 This could mean that certain income could potentially fall outside of the farming trade and certain gains on the land could potentially be treated as from an investment for Capital Gains Tax purposes.
- 7.19 While there is no difficulty with activities normally recognisable as farming such as growing crops and the raising of farm livestock, the guidance relating to the meaning of ‘husbandry’ in HMRC manuals does ‘presuppose a connection between the activity and the occupation of land which goes beyond the mere use of the land as a site for the activity’.⁹
- 7.20 There is a concern among some of those the OTS spoke to that certain land and activity might come to be seen as having moved out of ‘trading’ if it is being passively managed with the environmental outcome being the only output from the land. This could potentially mean that some options for land management could leave the landowner unable to qualify for Rollover Relief or Holdover Relief on such land. There is also a perceived risk that even if only part of a business is used in this way that this could deny a whole business access to Business Asset Disposal Relief for Capital Gains Tax purposes if this component were significant.
- 7.21 There is a wider risk that these tax issues or concerns could deter participation in certain such agreements, making it more difficult for the government’s environmental targets to be met.

Rollover Relief in compulsory purchase situations

Reinvestment asset qualification

- 7.22 It is hard to see the economic rationale for restricting reinvestment to a ‘like for like’ basis if the wider farming business sector would benefit more or as much from new agricultural buildings on land already held for the purposes of the business than from replacement land.
- 7.23 Even if the owner of farming land wants to reinvest in new farming land on a like for like basis the OTS heard that it is quite likely there will be no suitable land available within a reasonable distance of their remaining holding.
- 7.24 The OTS understands that the land market is now approximately half the size that it was at the introduction of the current Rollover Relief,¹⁰ and in 2019

⁹ HMRC Business Income Manual.

<https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim55100>

¹⁰ Savills Market Survey UK Agricultural Land 2014, p4.

<http://pdf.savills.com/documents/Savills-ALMS-Feb-2014.pdf>

less than 50,000 hectares were sold in the UK.¹¹ This is out of a total farmed area of over 9,200,000 hectares in England alone.¹² The OTS has been told that finding land in a specific locality can be a once in a lifetime opportunity.

- 7.25 In particular the OTS has been told that the effect of many landowners simultaneously losing land in the same area, for example in relation to major infrastructure projects such as 'High Speed 2', then looking for replacement land in competition with each other, creates an imbalance in the supply and demand of available land, forcing land prices upwards and making like for like reinvestment unaffordable.
- 7.26 National Audit Office figures show that around 7,000 hectares of land will need to be acquired along the route of Phase One of the High Speed 2 programme alone, with up to 50,000 compulsory purchase notices expected to be issued between 2017 and 2023.¹³

Compensation received for the devaluing of neighbouring or contiguous land

- 7.27 In certain situations, the purchasing authority may also make a compensation payment to a landowner specifically to reflect the fact that the value of the land near to but outside of the actual compulsory purchase area will be negatively impacted by an infrastructure project.
- 7.28 However, because this neighbouring land is not actually disposed of, the compulsory purchase legislation cannot be applied, and there is currently no provision for the deemed gain arising from such a compensation sum received to be rolled over, say into expenditure to improve the remaining land and buildings in some way.

Time limits

- 7.29 Many farming groups that the OTS met felt strongly that looking at the statutory defined date of disposal did not reflect the reality in many compulsory purchase situations.
- 7.30 In respect of the government's schemes such as High Speed 2, all affected land is 'safeguarded' for the scheme from the date of the Secretary of State's announcement of the scheme.
- 7.31 However, the statutory date of disposal of the relevant land for Rollover Relief purposes could be several years away, meaning that any early reinvestment may not qualify for relief as it is more than one year before the disposal.

¹¹ The Farmland Market, January 2021, Savills – 2019 sales, p4.

<https://pdf.euro.savills.co.uk/uk/rural---other/spotlight---the-farmland-market---2021.pdf>

¹² Defra Statistics: Agricultural Facts - Total farmed area p7.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972103/regionalstatistics_overview_23mar21.pdf

¹³ Investigation into land and property acquisition for Phase One (London – West Midlands) of the High Speed 2 programme, Department for Transport and HS2 Ltd, p4.

<https://www.nao.org.uk/wp-content/uploads/2018/09/Investigation-into-land-and-property-acquisition-for-the-Phase-One-Full-report.pdf>

- 7.32 The statutory date of disposal for Rollover Relief purposes is the time at which the compensation for the acquisition is agreed or otherwise determined by a tribunal. The OTS has been told that the final amount of compensation is normally agreed or determined after completion of the infrastructure project, which may be many years after the land has been acquired by the relevant authority.
- 7.33 This can add complexity and uncertainty where the owner is seeking to meet the statutory deadlines. The OTS understands that HMRC have significant discretion to extend the time limits,¹⁴ but although HMRC do make use of this discretionary power, many taxpayers must reinvest without knowing if relief will be available.

Provisional claims

- 7.34 In view of the timescale for reinvestment there is a facility to make a provisional claim to relief. A taxpayer who sells an asset and intends to re-invest before the three year re-investment time limit may claim provisional relief, which means that no immediate tax charge will arise when the asset is sold.
- 7.35 However, HMRC do not have powers to extend a provisional claim, so it is possible even where an extension to the reinvestment period has been agreed, for a temporary tax charge to arise in the interim period between the time a provisional claim lapses and the reinvestment being made. Although this Capital Gains Tax will ultimately be repayable, the OTS has been told that having to meet a charge arising just at the time that the money is needed for the reinvestment can have a significant effect on cash-flow and ability to re-invest.

Willingness to sell

- 7.36 The government guidance requires acquiring authorities to use compulsory purchase powers only as a last resort after seeking a sale by agreement with the landowner first. However, the Rollover Relief rules specify that relief will not be given in compulsory purchase situations where the landowner has shown a 'willingness to sell' in advance of the order.
- 7.37 Although the relief expressly accommodates disposals to authorities that have compulsory powers but haven't actually had to exercise them, some landowners have expressed concern as to whether entering into early negotiations with such purchasing authority could potentially jeopardise their relief.
- 7.38 As a related issue, the OTS has been made aware that the purchasing authority may not itself be incentivised to enter into early negotiations, because when purchasing the land it can claim Stamp Duty Land Tax relief only where a compulsory purchase order is in fact issued.
- 7.39 The OTS understands that in practice the risk of a landowner losing Rollover Relief in this way is largely theoretical as HMRC appear to have a narrow

¹⁴ HMRC Capital Gains Manual, Reliefs: Replacement of Business Assets (Roll-over Relief): Time Limit for Reinvestment.

<https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg60300>

interpretation of the 'willingness to sell' condition; however, the fact that both parties are potentially incentivised to 'hold out' for a compulsory purchase order seems likely to act as a barrier to early negotiations, which is a different, wider concern, and a potential distortion to the timing of sales more generally.

Conclusions – how the system could be improved

Environmental policy issues

- 7.40 Successfully designing and implementing a comprehensive new agricultural policy across all the constituent parts of the UK will not be achieved overnight so it is challenging to speculate on how such a policy will interact with the current tax rules at this stage.
- 7.41 The government will need to do further work over the coming years to understand how certain tax rules and environmental payment schemes interact. For example, some changes in land use could affect the trading status of a farming business.
- 7.42 It is not for the OTS to recommend that the government change its policy in this area, but where certain tax rules and environmental objectives create different incentives this should be a deliberate decision rather than an accidental one. Failure to coordinate effectively could create unnecessary barriers to wider environmental policy aims.

Rollover Relief in compulsory purchase situations

- 7.43 Where land is sold under compulsory purchase, the asset reinvestment classes could be extended to allow the owner of farming land to reinvest receipts into constructing or improving farm buildings on their remaining let agricultural land, or to allow wider diversification into other activities within their farming business.
- 7.44 The legislation could also be expanded to allow the deemed gain arising on the receipt of a compensation payment for the devaluing of land near to the compulsory purchase area to be rolled over.
- 7.45 While maintaining HMRC's discretion to extend the statutory time limits, formal timeframes for reinvestment could also be extended to better reflect the reality of compulsory purchase situations for owners of farming land, for example to commence when the safeguarding decision is made and to end say 5 years after the final compensation is paid.
- 7.46 In addition, where the circumstances are such that HMRC would be prepared to extend a formal Rollover Relief claim, it is not clear why HMRC should not be able to extend a provisional claim.
- 7.47 The HMRC guidance relating to the 'willingness to sell' point could be clarified to give more certainty to owners of farming land in compulsory purchase situations. Alternatively, given the issue seems to be largely theoretical, the 'willingness to sell' clause could potentially be removed altogether for Capital Gains Tax purposes, at least in relation to discussions with authorities possessing compulsory purchase powers.

- 7.48 In exploring this relief through an agricultural lens, the OTS is conscious there may also be parallels with the way other sectors or ownership models operate. The government should accordingly remain open to wider solutions where there is clear evidence that any of the issues raised above affect non-agricultural businesses to a similar extent.

Recommendation 12

The government should expand the specific Rollover Relief rules which apply where land and buildings are acquired under Compulsory Purchase Orders.

Land pooling arrangements

Background – how it works at the moment

- 7.49 Land assembly is the process by which landowners join forces to bring a large site together for development purposes before the land is sold and construction starts. There are several ways in which land can be assembled in this way - one method is commonly referred to as 'land pooling'.
- 7.50 Land pooling involves a collaboration between multiple landowners to assemble separate areas of land into a cohesive whole which is suitable for development, so that planning permission can be secured and infrastructure put in place before the sale to the developer.
- 7.51 A land pooling agreement often involves a separate 'vehicle' such as a company, a partnership or a trust. This can facilitate the planning process and indeed is often a requirement of the local authority planning department. It can also lead to a more structured and considered approach. In particular, such an approach can benefit landowners as it equalises value across the land as a whole, for example as between land which ends up being used as green space and land used for high-value housing.
- 7.52 However, the current tax treatment of land pooling agreements can give rise to a range of Capital Gains Tax and Stamp Duty Land Tax issues well before any land is sold and the proceeds are available (see Diagram 7.A below). As a result it can lead to complex and expensive structures being put in place to try and avoid those charges.
- 7.53 The main alternative to land pooling is the current 'traditional' method of assembling land from multiple owners which entails a series of separately negotiated option agreements between the individual landowners and the developer, to enable matters to be kept open until it is clear on what basis an overall deal can proceed.
- 7.54 This gives more certainty over the tax outcome for the landowner, but can involve protracted disputes over individual land values and may lead to a short term approach for the development project as a whole, with infrastructure and environmental issues potentially overlooked or side-lined in the desire to maximise immediate value.

Diagram 7.A: Simplified representation of the current tax position for land pooling arrangements



Source: OTS

Policy context

- 7.55 There are, of course, a range of wider policy issues for the government to consider in relation to the housing market and development more generally.
- 7.56 The consultation document 'Fixing Our Broken Housing Market' published in February 2017 by the Ministry of Housing, Communities and Local Government (MHCLG)¹⁵ explored the challenges of increasing the supply of all types of housing, including sustainable and affordable housing at all levels of the market.
- 7.57 Research undertaken in 2019 by Heriot Watt University and the National Housing Federation suggests that 340,000 new homes are needed each year in England for the period 2016 to 2031.¹⁶ However the MHCLG's House Building report for December 2020 estimated the figure for completed new build dwellings for the year to 31 December 2020 was only 148,630.¹⁷ Although new build levels for 2020 will have been impacted by COVID-19 restrictions, the comparable figure for the year to 31 December 2019 was 178,310 which still falls well short of the suggested requirement level.
- 7.58 One of the potential barriers to meeting this demand was explored in 'Fixing our Broken Housing Market' which asked whether a land pooling

¹⁵ <https://www.gov.uk/government/publications/fixing-our-broken-housing-market>

¹⁶ Housing supply requirements across Great Britain for Low Income Households and Homeless People, Heriot Watt, May 2019, p10.
<https://pureapps2.hw.ac.uk/ws/portalfiles/portal/24741931/HousingSupplyMay2019.pdf>,

¹⁷ Housing supply: indicators of new supply, England: October to December 2020, Ministry of Housing, Communities & Local Government, p6.
<https://www.gov.uk/government/statistics/housing-supply-indicators-of-new-supply-england-october-to-december-2020>

mechanism would facilitate the assembly of land, for example by local authorities for long term development projects.¹⁸ There were 689 replies to this question and in their 2018 response the government confirmed these were being taken into account in considering the best way to help bring land forward for development.¹⁹

Observations – challenges with this approach

- 7.59 The OTS has been told that there is tension between what is the best approach commercially and what is the most tax efficient.
- 7.60 For instance, a land pooling approach which would be simpler for the developer, and ease some of the current difficulties and delays in assembling land, can currently lead to perverse tax outcomes. This chapter goes on to explore some more specific situations where this tension is felt most keenly.
- 7.61 Some respondents to the OTS Call for Evidence have gone as far as saying that the net effect potentially hinders the government's wider objectives on housebuilding.
- 7.62 Although it may only affect a relatively small number of taxpayers the economic effect is likely to be significant due to the values involved.

Equalisation payments

- 7.63 It has been explained to the OTS that, currently, land collaboration agreements 'can more than double the tax liability for landowners'. This is because equalisation payments from one landowner to another are not usually allowable Capital Gains Tax deductions for the payer, but they result in taxable gains for the recipient.

Example 21 – equalisation payments

John and Yuki are farmers who agree to pool the proceeds of their land for housing development purposes, to make the planning process easier.

John's land is closer to the road so James the developer buys that first. In line with their agreement John transfers half the proceeds to Yuki. However, because money contracted to go to Yuki is not an allowable deduction, John is taxed on 100% of what he receives. Conversely the 50% of the proceeds which Yuki receives from John is also taxable.

The reverse happens when Yuki sells her land and transfers half the proceeds to John. Collectively this means that between them they would be taxed on double the amount they actually receive.

¹⁸ Fixing our Broken Housing Market, Ministry of Housing, Communities & Local Government, p80.
<https://www.gov.uk/government/publications/fixing-our-broken-housing-market>

¹⁹ Government response to the housing White Paper consultation: Fixing our broken housing market, Ministry of Housing, Communities & Local Government, p16.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685297/Government_response_to_the_housing_White_Paper_consultation.pdf

- 7.64 This double taxation for equalisation payments appears unfair and contrary to the basic principles of Capital Gains Tax.
- 7.65 To avoid this double taxation, landowners need to consider other more complex structures such as a land pooling vehicle, cross options or a special purpose company, all of which present significant taxation and commercial challenges.
- 7.66 The current challenges affect all levels of housing development projects. Although the effect is more obvious with large-scale projects, the OTS has also heard that smaller developments are less likely to be able to pay for expensive advice to create the required structures and these projects are therefore more likely to fail or to have onerous tax charges.

Upfront tax charges

- 7.67 As the 2020 Building Better, Building Beautiful Commission explained, currently 'landowners pooling their land...with other landowners may well create tax liabilities before they have received major receipts'.²⁰
- 7.68 These liabilities potentially affect all types of land pooling structures and can include upfront Capital Gains Tax or Stamp Duty Land Tax charges many years ahead of money being generated by house sales. In addition, the long development time horizon means such charges can severely limit taxpayers' willingness to assemble large sites.
- 7.69 So in the example above, if John and Yuki pooled their land through a company they might have to pay Capital Gains Tax and Stamp Duty Land Tax on the transfer to the company. If the site development is particularly complex, it could be several years before they can recoup these costs from the eventual sale to James.

Loss of reliefs

- 7.70 With a pooling arrangement, Capital Gains Tax reliefs such as Business Asset Disposal Relief or Rollover Relief may not be available to the same extent when the land is sold unless a post-pooling partnership is set up, which adds further tax and commercial complexities.
- 7.71 For example, a landowner owning 100 acres (representing 10% of the overall collaboration area of 1,000 acres) would, on pooling, transfer 90% of that interest to the others involved, in return for a 10% interest in their land. The landowner now owns 10% of their original land together with 10% of the other land. Business reliefs on the landowner's original land are therefore significantly restricted (as only 10% of that original land is still owned by them) and there would be no entitlement to business reliefs on the 10% interest in the other 900 acres (as it is not used in that landowner's own business).

²⁰ Living with Beauty, Building Better Commission, January 2020, p84.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/861832/Living_with_beauty_BBBBC_report.pdf

- 7.72 Again, turning to John and Yuki, if they transfer their land directly to James they could potentially benefit from Business Asset Disposal Relief or Rollover Relief as they are selling business assets. However, if they transfer to a new structure and sell after say five years when the deal has been finalised they are likely to have significantly restricted tax reliefs, even if they have continued to farm the same land in the same way until sale.

Failed collaborations

- 7.73 Another important consideration is the ability for the pooling arrangement to be reversed if one or more of the participants wishes to withdraw or the planning application is unsuccessful.
- 7.74 If a pooling structure is set up, there can be tax charges if the land is withdrawn from that structure. If John and Yuki's project failed to obtain planning permission, they could face additional Capital Gains and Stamp Duty Land Tax charges in extracting the land from the pooling structure.
- 7.75 The current lack of flexibility in being able to withdraw from failed collaborations without onerous tax charges is one of the issues which give rise to a preference for using options in land collaborations - which can then lead to what many regard as a less desirable short-term approach to land development.

Capital/income divide

- 7.76 If land owned by a taxpayer for many years is sold it would usually be considered a capital transaction subject to Capital Gains Tax. However, if that land was improved by the landowner and subsequent development-related activities took place (such as installing access roads), it could be that there is a new trade (of land development) - which would be subject to Income Tax.
- 7.77 Given the difference between Capital Gains Tax and Income Tax rates, landowners are cautious about anything that could change the tax status of their assets. This can distort their decision making towards quick sales of the land rather than working to improve it ahead of a subsequent sale, even if that otherwise made the most commercial or environmental sense.
- 7.78 HMRC acknowledge in their Business Income Manual that this boundary can be 'ambiguous'.²¹ Moreover, some of the examples given appear to be contradictory. One page explains that the development of infrastructure alone is not sufficient to push the development towards Income Tax while an example in another part of HMRC's guidance appears to suggest the opposite.²² Many housebuilding companies will, particularly for larger developments, insist on a level of infrastructure before agreeing to buy the land so clarity on this point would be welcome.

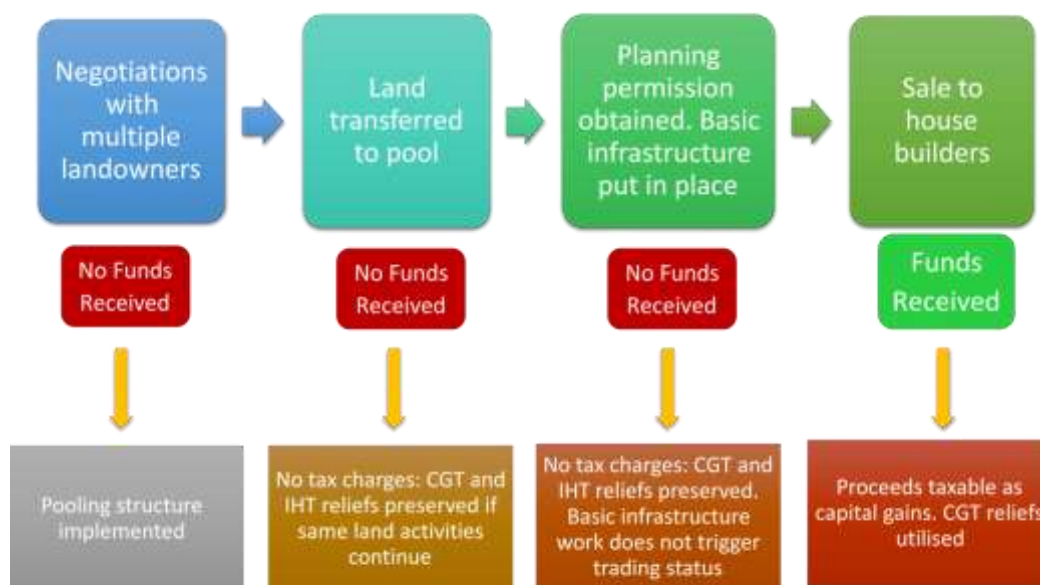
²¹ <https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim60065>

²² <https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim60806>

Conclusions – how the system could be improved

- 7.79 In this context, the OTS considers that the government should explore ways to make land assembly more tax neutral.
- 7.80 The OTS has considered a number of potential approaches that have been suggested to address these challenges.
- 7.81 One approach, which would be relatively easy to understand, could be to allow equalisation payments between landowners to be tax deductible. This would of course require careful consideration of the circumstances in which such a rule should apply.
- 7.82 Alternatively, it could be possible to create a specific (and regulated) type of land pooling vehicle, that would freeze the tax status of the land at the point of entry. This would ideally apply more widely than Capital Gains Tax, to include Stamp Duty Land Tax and potentially Inheritance Tax. While this could potentially address both the upfront tax and double taxation issues it would undoubtedly be complex and involve definitional challenges.
- 7.83 Such a pooling vehicle would need to allow land to be sold with a neutral tax outcome. If it was too prescriptive it might inhibit use and if it were too loose it could facilitate avoidance.
- 7.84 An example of how this structure might look is demonstrated below.

Diagram 7.B: Simplified representation of an alternative approach for land pooling agreements



Source: OTS

- 7.85 The OTS has not arrived at a developed recommendation at this stage on the ultimate merits or detailed policy design of either of these potential approaches. They could potentially simplify the current position and remove existing distortions and have a positive effect on housing developments, but this is a complex area with no obvious or easy solutions.

- 7.86 Careful thought would need to be given to any change, so it did not open up opportunities for avoidance or merely provide a tax break for landowners. If the government were to explore changes in this area it should work collaboratively with landowners, developers, industry experts and tax professionals to design something that works in most situations.
- 7.87 However, there is in any event clear potential for better and more comprehensive HMRC guidance in this area - currently there is no specific guidance on land pooling issues - and for a greater facility for a clearance procedure (**recommendation 14**).

Flat Management Companies

Background – how it works at the moment

- 7.88 Leases are a form of property ownership which is time-limited (typically to a fixed period of years, such as with a flat held on a 99-year lease), where the ultimate control of the property is shared with, and limited by, the person holding the underlying freehold interest in the property.
- 7.89 While almost any type of property can be leased, leasehold ownership is strongly associated with flats.
- 7.90 Government statistics suggest that there were 4.5 million residential leasehold properties in England in the 2018-19 financial year of which 3.1 million – over two thirds – were flats.²³
- 7.91 Many flat freeholds are owned by third parties, but some are owned by the leaseholders of flats in the building. These leaseholders are often described as owning a share of the freehold.
- 7.92 The flat owners with a share of the freehold own two separate assets - their leasehold interest and also their interest in the underlying freehold of the building. The freehold ownership is often structured through a separate management company in which the leaseholders own shares.
- 7.93 The OTS has particularly had drawn to its attention one common situation which produces unexpected tax results for leaseholder-owned flat management companies.

Tax implications of extending a typical lease where the freehold is owned by a third-party investor

- 7.94 If a leaseholder extends the length of their lease this ordinarily creates a tax charge for the owner of the freehold, for example, the flat management company. This follows from the fact that the company has sold a lease at a gain and company gains are taxed to Corporation Tax.

23

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/898194/Leasehold_Estimate_2018-19.pdf

Example 22 – simple lease extension

Sali lives in a flat in Brighton - one of five in a large converted Georgian house. She pays £20,000 to FlatManCo Ltd (which is owned by a local property investor) to extend the lease to 120 years.

FlatManCo Ltd pays 19% Corporation Tax on the £20,000 it has received.

Tax implications of extending a lease on a leaseholder-owned flat management company

- 7.95 However, the tax outcome is similar if the leaseholders do not actually pay the flat management company for the lease extension - which is a common situation where the leaseholder and freeholder are effectively the same person.
- 7.96 This tax treatment is a consequence of anti-avoidance provisions concerning transactions between 'connected persons' that, because the leaseholders and flat management company have a close connection, treat the transaction as being made at market value. So the company is taxed on the full market value of the lease extension, whether or not it receives any money.

Example 23 – lease extension where the leaseholder also owns the freehold

Sali and the other four leaseholders in her building want to extend the leases on their flats to 120 years. Each owns a 20% stake in FlatManCo Ltd and no money changes hands. The nominal taxable value of each extension is £20,000.

FlatManCo Ltd is deemed to have made a gain on the full £100,000 and therefore has to pay Corporation Tax at 19% on the gain.

Sali and the other four leaseholders in her building have to put money into the company to fund the tax payment.

- 7.97 Well-advised leaseholders - particularly in the situation where they are exercising a collective 'right to buy' their freehold - will have extended their leases at the same time they buy the freehold, and the flat management company will only hold the freehold as nominee for the leaseholders. In that situation the leaseholders do effectively own both the leasehold and freehold and there are no tax implications if the leases are extended further (as the flat management company doesn't own the freehold outright, it just manages it on behalf of the freeholders).

Position of the leaseholder on a lease extension

- 7.98 As well as the Corporation Tax charge on a deemed gain for the flat management company, a leaseholder may also have a Capital Gains Tax

liability as in tax terms they are selling their old lease before acquiring the new, extended lease.

- 7.99 If, perhaps because property prices have increased, the value of the old lease has risen over time, then the 'sale' of the old lease to the flat management company will trigger a capital gain as the transaction will be at market value.
- 7.100 If the leaseholder is an owner-occupier the gain may be covered by Private Residence Relief, but if the property is, say, a buy to let investment, the gain may well result in a tax liability. Again, this is without any money changing hands.
- 7.101 HMRC's Extra Statutory Concession D39²⁴ disregards this disposal and reacquisition where full market value is paid for the lease extension, but the OTS understands that this concession does not extend to the situation where the leaseholder pays nothing (or less than the market value) for the new lease.
- 7.102 There is also a further issue for the leaseholder as the flat management company, by granting a lease extension at less than its market value, may be treated as having paid a 'dividend' to the leaseholder/shareholder, which will be their taxable income.

Leasehold and commonhold reform proposals

- 7.103 More widely, the government is currently taking forward a range of reforms to restrict and regulate the use of leases in the future.²⁵ These reforms include looking to reinvigorate commonhold as an alternative to the long leasehold system, and to improve the process for buying a freehold or extending a lease.
- 7.104 Although currently used very infrequently, commonhold is a form of ownership, introduced in 2004 for multi-occupancy development, where each flat owner directly owns their share of the freehold. Wider use of commonhold could simplify the tax position of the owners as it does not involve granting leases.
- 7.105 However, if flat owners wish to adopt commonhold ownership, the tax position of the transfer of the freehold from a flat management company to commonhold is currently unclear. It seems very likely, however, that the market value disposal rules would apply to the transfer.
- 7.106 This therefore gives rise to similar tax issues for the flat management company to those described above, as there would be a market value disposal of the freehold by the flat management company which could give

²⁴ D39 Extension of leases, p48.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733377/Extra_Statutory_Concessions.pdf

²⁵ Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814334/CCS0519270992-001_Gov_Response_on_Leasehold_Reform_Web_Accessible.pdf

rise to a capital gain even though, again, nothing has been paid to the company by the leaseholder/shareholder.

- 7.107 This potential capital gain and the resulting Corporation Tax charge for the flat management company (which would have to be funded by the shareholders) could act as a disincentive to adopting commonhold reform in these circumstances.

Observations – challenges with this approach

- 7.108 While to be expected that the company will be taxed on profits arising from disposals to third parties, it is an odd outcome for a flat management company to be taxed on a deemed gain which arises purely from a lease extension by one of its own shareholders who is also in effect the owner of the freehold concerned.
- 7.109 The potential capital gain for leaseholders who are not owner-occupiers also seems anomalous, as does the added Income Tax issue of the company being treated as having paid a dividend.
- 7.110 One respondent to the Call for Evidence suggested that this situation was incompatible with the government's wider objectives on leasehold reform.
- 7.111 The existing situation is particularly unfortunate for leaseholders (and their respective freehold companies) who did not extend their leases at the same time as they bought their freehold.
- 7.112 It may be the case that where leaseholders are buying a share of the freehold through a flat management company, it is more difficult or more expensive to extend the lease at that time – so they intend to do it 'eventually'. If they had bought and extended at the same time and also arranged for the company to simply act as their nominee, the upfront costs may have been slightly more but they would not have these tax issues further down the line.
- 7.113 There is also little guidance from HMRC on this issue. While accepting that the connected persons rules should apply between, for example, family members or business partners, it seems odd that they should also apply in this situation where the individual is only, effectively, connected with themselves.

Conclusions – how the system could be improved

- 7.114 For a flat management company owned by the leaseholders, the OTS suggests that the government should explore whether the rules could work on the basis that the freeholder company is acting as nominee for the leaseholder. This would remove the capital gains charges for the freeholder company and the leaseholder and also remove the potential for a company to be treated as paying a dividend in this situation.
- 7.115 This would require further definition but would broadly cover the situation where leaseholders are also freeholders and no payments are made for lease extensions. This would not apply where payments are made for lease extensions or the flat management company is owned by a third party.
- 7.116 While the majority of leaseholders are unlikely to be affected, as they have either extended their lease already or do not own a share of the freehold,

resolving this could save the minority who are affected significant amounts of tax.

Recommendation 13

The government should consider exploring ways of removing inappropriate Corporation Tax or Capital Gains Tax charges where a freeholder is in effect only extending their own lease.

7.117 Further consideration also needs to be given to the potential tax implications of a transfer of freeholds owned by flat management companies to commonhold to ensure this does not give rise to unintended and unexpected tax charges.

7.118 If commonhold becomes more widely used, the OTS suggests that the tax implications of adopting commonhold should be considered in more detail. In the meantime, HMRC should create new guidance to illustrate this area (recommendation 14).

Annex A

Scoping Document

This scoping document was published on 14 July 2020.

Capital Gains Tax Simplification Review

Capital Gains Tax is charged on the chargeable gains of individuals and trusts. Chargeable gains made by companies are charged to corporation tax. Both taxes were introduced in 1965 and have a common core of rules, while having changed and diverged from each other somewhat since then.

The Chancellor of the Exchequer has requested that the Office of Tax Simplification (OTS) carry out a review of Capital Gains Tax and aspects of the taxation of chargeable gains. The review will identify, and offer advice to the Chancellor about, simplification opportunities relating to administrative and technical issues affecting individuals, partnerships, and unincorporated or single entity owner-managed companies, as well as areas where the present rules can distort behaviour or do not meet their policy intent.

The OTS has touched on aspects of Capital Gains Tax and the taxation of chargeable gains in some previous reports, but this is the first time the OTS will have looked more widely at this area.

The OTS will publish a call for evidence and may publish more than one report on its findings.

Scope of review

The review will consider Capital Gains Tax and the taxation of chargeable gains in relation to individuals and smaller businesses and develop recommendations for simplification including reducing distortions from both an administrative and technical standpoint.

This will include consideration of general areas such as:

- the overall scope of the tax and the various rates which can apply
- the reliefs, exemptions and allowances which can apply, and the treatment of losses
- the Annual Exempt Amount and its interactions with other reliefs
- the position of individuals, partnerships and estates in administration
- the position of unincorporated businesses and stand-alone owner-managed trading or investment companies, including the setting up, selling or winding up of such businesses or companies

- any distortions to taxpayers' personal or business investment decisions
- interactions with other parts of the tax system such as Income Tax, Capital Allowances, Stamp Taxes and Inheritance Tax, including potentially different definitions for similar transactions/events.

It will also look at more specific areas such as administrative or technical issues relating to

- clearance and claims procedures
- chargeable gains on shares and securities, including holdings of listed shares
- the acquisition and disposal of property
- the practical operation of principal private residence relief
- consideration of the issues arising from the boundary between Income Tax and Capital Gains Tax in relation to employees
- valuations, record-keeping, calculating any tax payable and making returns, including claiming losses
- the information HMRC have and can use to help them reduce administrative burdens, improve customer experience and ensure compliance.

In keeping with the focus on smaller businesses and individuals, this review will, in particular, not extend to issues specific to corporate groups, such as substantial shareholding exemption, company reorganisations or demergers.

Further guidance for the review

In carrying out its review, the OTS will

- research widely among all stakeholders
- have regard to the effect of the tax and its reliefs on investment and the productive use of assets
- consider the likely implications of recommendations on the Exchequer, the tax gap and compliance
- take account of relevant international experience
- establish a Consultative Committee to provide support and challenge
- liaise with HMRC's Administrative Burdens Advisory Board
- consider the implications of devolution of tax powers and different legal systems within the UK
- be consistent with the principles for a good tax system, including fairness and efficiency
- be mindful of the effect of taxpayer trust in the operation of the tax system

Annex B

Consultative Committee

The OTS normally establishes a Consultative Committee, chaired by the Tax Director, for reviews requested by the Chancellor under section 186 of FA 2016. Two meetings of the Committee were held during the work on this report.

The purpose of the Committee is to facilitate confidential consultation to provide input and challenge during the course of the review. Committee members serve in a personal capacity, rather than on behalf of any organisation to which they may belong.

We are very grateful for the time and support of our Consultative Committee members.

The report's content and recommendations remain the responsibility of the OTS.

Arun Advani	University of Warwick
Paul Aplin	Freelance tax writer and consultant
John Barnett	Burges Salmon LLP
Isobel d'Inverno	Brodies LLP
Andrew Jackson	Fiander Tovell
Emma McGuire	HM Revenue & Customs
Pete Miller	The Miller Partnership
Michael Parker	The National Farmers Union
Andy Richens	Freelance tax training consultant
Lisa Spearman	Mercer & Hole
Donald Stark	HM Treasury
Andy Summers	London School of Economics
Gemma Tetlow	The Institute for Government
Helen Thornley	The Association of Taxation Technicians

Annex C

Organisations Consulted

The OTS has listed below the wide range of organisations who gave their time to provide evidence to this review. The OTS is grateful to these organisations and to the large number of individuals who gave their time to provide evidence either in writing or through the online survey. Individual names have not been published here.

A J Bell

Agricultural Law Association

Agricultural Representative Bodies Group

Alvarez & Marsal Taxand UK LLP

Association of Accounting Technicians

Association of British Insurers

Association of Taxation Technicians

BDO

Boodle Hatfield LLP

British Property Federation

British Venture Capital & Private Equity Association

Central Association of Agricultural Valuers

Charles Russell Speechlys LLP

Chartered Accountants Ireland

Chartered Institute of Taxation

Country Land and Business Association

Crowe UK LLP

Deloitte

Department for Environment, Food & Rural Affairs

Duncan & Toplis

Employee Ownership Association

Ensors

Enterprise Investment Scheme Association
Estates Business Group
Freshfields
Hardcastle Burton LLP
Hargreaves Lansdown
Herbert Smith Freehills LLP
Highways England
Historic Houses
HM Revenue & Customs
HM Treasury
Hunters Law LLP
Institute for Family Business
Institute of Certified Bookkeepers
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Investment & Life Assurance Group
Knight Frank
KPMG
Law Society
Law Society of Scotland
Law Commission
Lombard Odier
Low Incomes Tax Reform Group
Marcussen Consulting
Meridian Private Client LLP
Ministry of Housing, Communities & Local Government
National Farmers' Union
National Residential Landlords Association
Non Resident Collective Investment Vehicle Association
Old Mill Accountancy LLP
Penningtons Manches Cooper LLP
Personal Investment Management and Financial Advice Association

Pett, Franklin & Co LLP
Premier Sales and Lettings
ProShare
PwC
Quoted Companies Alliance
Resolution
RSM
Saffery Champness
Sapphire Business Services (Banbury) Ltd
Scottish Government
Scottish Land & Estates
Scrutton Bland
Share Plan Lawyers
Society of Trust and Estate Practitioners
Taylor Wessing LLP
The Investing and Saving Alliance
The Investment Association
The Jonathan Lea Network
The Lothbury Partnership
The Stewardship Initiative
UK Individual Shareholders Society
UK Platform Group
UK Shareholders' Association
YBS Share Plans

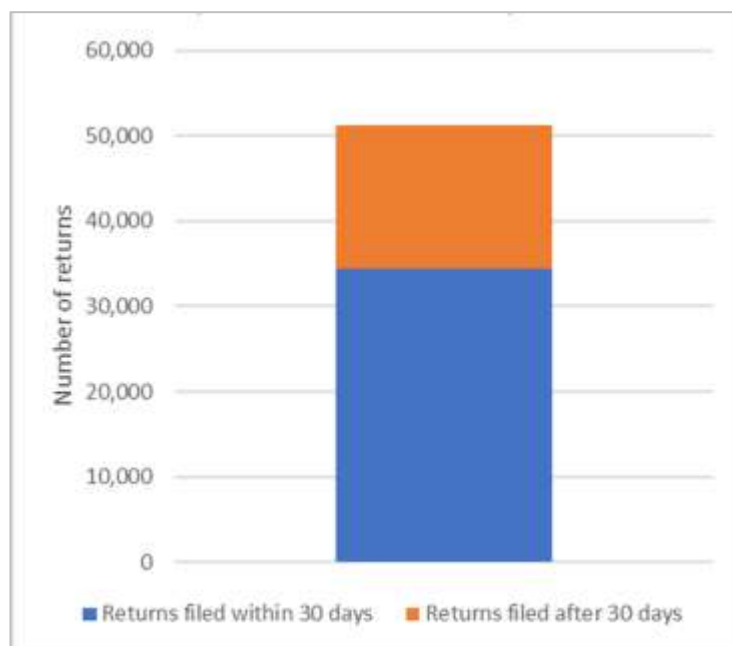
Annex D

Data sources used in this report

- D.1 This Annex contains the HMRC data and projections that are referred to, or published for the first time, in this report.
- D.2 Throughout this report, unless specified otherwise, HMRC's Capital Gains Tax statistical data for tax year 2017-18 data is used. The Capital Gains Tax statistical tables can be found at <https://www.gov.uk/government/statistics/capital-gains-tax-statistical-tables>.
- D.3 Where relevant, both here and in the body of the report, there are references to the specific tables from which data has been used.
- D.4 Estimates are on an accruals basis unless otherwise stated. This means they relate to the period the Capital Gains Tax liability arises rather than when HMRC receives it.
- D.5 In addition, the estimates are on a static basis only. This means they do not take into account the potential impact of any changes to people's behaviour as a result of the considered policy change.
- D.6 This means that the estimates of making some of these changes may overestimate or underestimate any potential Exchequer yield. Where the report refers to an 'average', this refers to an arithmetic mean unless otherwise specified.

Chapter 1 – Awareness and Administration

Chart 1.A: Chart showing UK Property tax returns filed 6 April 2020 to 6 January 2021



Source: HMRC statistics. Data collection period 6 April 2020 – 6 January 2021

- D.7 Chart 1.A shows HMRC management information on the number of UK Property tax returns filed in the nine month period from 6 April 2020, when the requirement was introduced, to 6 January 2021. The total number of returns filed was 51,300.
- D.8 Of the returns filed, 34,500 (approximately two thirds) were filed within 30 days. These are represented by the colour blue in the chart. The colour orange represents the 16,800 returns that were filed late, meaning after 30 days. It should be noted, however, that for returns due up to and including 30 June 2020, the deadline for reporting was extended to 31 July 2020; as such, some of the 'late' returns will not have been treated as such and it is possible they would have been filed within 30 days had the extension not been granted.
- D.9 It should also be noted that the total of 51,300 is a total of the returns that were filed, as in received by HMRC, in the period. The total of returns due was unknown at the time of preparing this report and could not be estimated reliably due to changes in the property market resulting from the COVID-19 pandemic. It is, however, virtually certain that some returns that were due to have been filed by 6 January 2021 were not filed, either because they were late or because of a failure to file.
- D.10 HMRC have announced plans to publish statistics on disposals of residential property where CGT is due within 30 days of completing the disposal. These statistics are intended for release in August 2021. Further details can be found on page 8 of the Capital Gains Tax Statistics Commentary.

Paragraph 1.55

"HMRC data shows that in the 2018-19 tax year, which was before the UK Property tax return was introduced, only 5,010 returns were made using the 'real time' Capital Gains Tax service, with just 1,670 returns relating to the disposal of assets than were not residential property. Furthermore, 1,360 of individuals using this service also filed a Self Assessment tax return including the Capital Gains Tax pages."

- D.11 HMRC management information shows that, for the 2018-19 tax year (before the introduction of UK Property tax returns), the total number of reports made using the 'real time' Capital Gains Tax service was 5,010. Excluding residential property the total number of optional reports was 1,670. Since 6 April 2020, gains on UK residential property must be reported using UK Property tax returns.

Paragraph 1.75

"Emerging evidence from HMRC suggests that about 40% of UK Property tax returns are filed by agents."

- D.12 Of the 51,300 total UK Property tax returns filed between 6 April 2020 and 6 January 2021 and featured in the Chart above, 20,000 (39%) were submitted by agents acting on behalf of taxpayers.

Paragraph 1.95

"The Exchequer effect in the 2021-22 tax year of moving to 60 days or 90 days in that tax year would be approximately £105 million or £210 million respectively - although the cost would come down significantly in subsequent tax years."

- D.13 The figures cited in this sentence are estimates prepared by HMRC analysts of the cost to the Exchequer of extending the deadline for reporting and payment of Capital Gains Tax on gains on residential properties from 30 days to 60 or 90 days.
- D.14 The proposed extension, in effect, only delays the revenue rather than reducing it. However, it does have a cost to the Exchequer because revenues are accounted for in the tax year in which the payment is due, so the proposed extensions would push approximately one or two months' revenues respectively into the subsequent tax year.
- D.15 The impact would mostly be felt in the first year but there would be an ongoing, smaller cost annually, due to the fact that revenue forecasts predict growth year on year, and a part of this growth would be pushed back.
- D.16 The table below shows the estimated impact over five years if the measure were implemented with effect from the 2021-22 tax year:

	Receipts £m						
	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	Total
Static cost of starting payment window in 2020 - 30 day payment window	935	285	95	110	125	120	1670
Additional static cost for 60- day payment window	0	-105	-15	-10	-10	-10	-150
Additional static cost for 90- day payment window	0	-210	-30	-15	-20	-15	-295

D.17 The figure of £935m in the upper left corner of the table represents the initial increase in revenues estimated to result from the 30 day reporting and payment window being introduced in the first place. The other figures in that row represent the estimated increase for subsequent years, which is anticipated to stabilise as, once the system is established, the ongoing benefit is the consequence of bringing forward the effect of growth. The estimated adverse effect of extending the deadline follows the same pattern of having most effect in the year of introduction and then stabilising.

D.18 These estimates are 'static' in the sense that they do not factor in any behavioural changes that could arise as a result of the policy change. The estimates are based on the Office for Budget Responsibility's economic projections as of autumn 2020.

Paragraphs 1.117 – 1.118

"In the tax year 2017-18, net gains on the disposal of listed shares (after allowing for losses) totalled £12.4 billion and accounted for 21% of total net gains of £58.9 billion.

In that tax year, a total of around 195,000 individuals reported gains on the disposal of listed shares. Of these, around 90,000 individuals paid Capital Gains Tax on a total of around 843,000 disposals of shares, which is an average of around nine disposals by each taxpayer. Each disposal represents a shareholding in a particular company."

D.19 Total net gains means gains after allowing for losses offset but before allowing for the Annual Exempt Amount. The total is taken from Table 7 of the Capital Gains Tax National Statistics, as is the figure for 843,000 disposals subject to Capital Gains Tax.

D.20 The total number of individual customers of 195,000 is taken from data provided by HMRC analysts, which indicates that around 105,000 taxpayers (just over half) declared gains on listed shares but were not liable for Capital Gains Tax in that tax year, while 90,000 declared gains on listed shares and were liable for Capital Gains Tax in that year.

D.21 The 'average' cited of nine disposals by each taxpayer is a mean, meaning it is calculated by dividing the total number of disposals subject to Capital Gains Tax of 843,000 by the total number of taxpayers of 90,000.

Chapter 2: Main homes

Paragraph 2.4

“Private Residence Relief is estimated to benefit 1.5 to 2 million homeowners annually and to have cost the Exchequer £25 billion in tax year 2019-20.”

- D.22 The figure of £25 billion is from a published estimated costing prepared by HMRC analysts for the 2019-20 tax year and is included in its Estimated Cost of Non Structural Tax Reliefs. As sales that qualify for full Private Residence Relief are not reportable, the estimate is based on residential property transfer data recorded in the Stamp Duty Land Tax database (this is a tax paid by the purchaser on acquiring a property).
- D.23 The figure of 1.5 to 2 million taxpayers is an estimate based on national statistics relating to owner occupation of properties and number of owners per property.

Paragraph 2.11

“It is estimated that just over 9,000 people paid Capital Gains Tax on a property disposal that received only partial Private Residence Relief in tax year 2018-19.”

- D.24 The figure of 9,000 is based on an HMRC costing, which analysed the tax returns of individuals claiming relief from Capital Gains Tax in 2018-19 under one of the following categories (as entered in the return):
- D.25 PRR – Private Residence Relief where Letting Relief does not apply.
- D.26 LET – Private Residence Relief where Letting Relief applies (note the data pre-dates changes to Lettings Relief introduced in April 2020).
- D.27 MUL – multiple categories, where more than one category applies.
- D.28 The returns with claims for relief under multiple categories were further analysed and only those with a reference to either Private Residence Relief or Letting Relief in the free text section of the tax return were included in the results. There is some uncertainty in this free text analysis as it does not take into account additional documents that customers may have provided in which they claim Private Residence Relief.

Chapter 3: Tangible moveable property

Paragraph 3.3

“Chattels are not specifically captured in the Self Assessment tax return but HMRC estimate that, for the 2017-18 tax year, a total of £15 million in Capital Gains Tax was paid in respect of disposals of chattels, by around 300 taxpayers. This is less than 0.2% of the total Capital Gains Tax yield for that year.”

- D.29 This estimate was prepared by HMRC analysts based on a representative sample of Capital Gains Tax returns. There is some uncertainty in this estimate as the Capital Gains Tax pages of the Self Assessment tax return do not include a specific section for chattels and they are, instead, captured as “Other property” alongside different types of assets including those that qualify for Business Asset Disposal Relief. The estimate is therefore based on

an analysis of the free text returns provided to HMRC by customers which is necessarily more judgment based and therefore uncertain.

Chapter 4: Divorce and separation

Paragraph 4.5

“For the 2018-19 tax year, HMRC analysts identified £8 million of Capital Gains Tax that had been paid by fewer than 300 taxpayers citing divorce or separation in the free text on their Self Assessment tax returns. These figures should be considered indicative only as customers are not required to declare divorce as part of their returns so the data may be incomplete.”

D.30 HMRC analysts were asked to identify Capital Gains Tax liabilities that might be connected with a divorce. There is no requirement to say whether a transfer relates to a divorce and nor is there a requirement to state marital status or disclose a divorce in the Self Assessment tax return. The analysts performed a text search on the free text section within the tax returns of taxpayers disclosing a chargeable gain in tax years 2016-17, 2017-18 and 2018-19. They searched for nine phrases including ‘divorce’ and ‘separation’, with the following results:

Tax Year	Number of Individuals with a “divorce related term” in SA108 free text	Of which are CGT liable	Total CGT
2016-17	390	210	£7m
2017-18	410	230	£10m
2018-19	420	240	£8m

D.31 The figures in bold are those that are cited in the report.

D.32 These figures are only indicative as individual returns were not reviewed in depth. There are a number of factors that could affect these estimates, most notably:

- Some of the tax paid by the taxpayers identified may not have related to transfers between the divorcing spouses; and
- Tax paid on a divorce will not have been identified where there was not a disclosure in the free text or when search terms were included in separate attachments provided by individuals as part of their return.

D.33 The figures are broadly consistent over three consecutive tax years and therefore have been taken as an estimate of the annual revenue that may be associated with divorce.

Chapter 5: Business issues

Paragraphs 5.8-5.9

“In relation to the 2018-19 tax year, HMRC identified around 1,400 individuals who may have had to calculate Capital Gains Tax where the proceeds may have been

deferred. Collectively they had a total liability of £240 million in that tax year although the amount they paid may be revised up or down over coming years.

If the change from Entrepreneur's Relief to Business Asset Disposal Relief is factored in, being a reduction in the amount taxed at 10% from £10 million to £1 million, this figure would increase to £320 million."

D.34 These figures were obtained through another exercise in free text analysis, as described above, because there is no requirement or facility to specify deferred proceeds elsewhere in the Self Assessment tax return. The following were the results returned from five phrases, including 'deferred consideration' and should be considered indicative only given the uncertainties associated with the free text analysis:

Tax year	Number of Individuals with a "deferred consideration term" in SA108 free text	Of which are Liable	Total CGT	Adjusted for BADR cap of £1m
2016-17	1340	890	£185m	£260m
2017-18	1340	930	£270m	£350m
2018-19	1420	920	£235m	£320m

D.35 As with the tax on divorce statistics, it is possible that not all of the tax relates to disposals featuring deferred consideration. It is also impossible to verify that all taxpayers in receipt of deferred consideration have been included where there was not a disclosure in the free text or when search terms were included in separate attachments provided by individuals as part of their return.

D.36 The adjusted figures show the estimated tax that would have been paid if, instead of the £10 million lifetime limit on gains qualifying for Entrepreneurs' Relief that applied before April 2020, the limit was £1 million as it is now for Business Asset Disposal Relief. This is a static estimate of the cost, and so does not capture any behavioural changes that may have occurred.

D.37 The figures in bold are those that are cited in the report.

Paragraphs 5.23 and 5.25

"In relation to the 2018-19 tax year, indicative analysis suggests there were around 80 individuals who had deferred proceeds and used losses against an earlier year's capital gain."

"Based on a sample of tax returns the majority of transactions are adjusted within four years of the initial disposal."

D.38 As part of the above-mentioned free text analysis, a subset of individuals was established that had no liability to Capital Gains Tax in the tax year and had reported a loss on disposals of shares.

- D.39 Further analysis of the free text identified those who mentioned an adjustment or loss and referred to offsetting the loss against an earlier gain on the initial transaction. The number of individuals identified in this way were:

Tax year	No. of individuals
2016-17	<30
2017-18	40
2018-19	80

- D.40 Based on analysis of tax years in the free text, a sample of returns was identified for further analysis. The majority of returns sampled included elections for losses occurring within one to four years from the initial transaction. As with the earlier free text analysis this should be considered indicative only due to limitations with the data used and the inferences that may be drawn from it.

OTS online survey

- D.41 Some figures cited in the report are from the OTS Capital Gains Tax survey, opened to the public on 14 July 2020. These figures are not statistical taxpayer data and are considered to be indicative – not necessarily representative – of the taxpayer experience.
- D.42 The OTS Capital Gains Tax online survey asked questions to assess the respondents' level of understanding of the tax and the practical barriers they faced in paying it. The survey was completed by nearly 1,200 people and revealed a wide range of views. It is important to highlight that the survey was open to all who wished to take part and, as the respondents were only those who chose to complete the survey, it did not form a representative sample of society.

APPENDIX 6

Moat Farm Statement and surveys

Moat Farm

Salehurst

Moat Farm

Moat Farm is made up of 220 acres and is farmed as a traditional mixed High Weald Farm. It incorporates approximately 114 acres of grass meadows on the flood plain (Lower Meadows), 31 acres of apple orchards and the remainder are grass meadows situated on higher ground including 3 fields that have been re-wilded.

History

The farm has been run by the same family and in a similar format since its purchase at the end of the second world war by Emma's grandfather as some respite from his time as a POW on the Burma railway, his Sergeant Major also came to live on the farm as the herdsman. It originally housed a small dairy herd along with apple orchards as was prevalent on the High Weald farms. The dairy cows were sold in the 1990's with the farm concentrating on the orchards with the grass fields being grazed by sheep and a well-established pony stud. The farm has consistently followed an ecologically driven path decades before its importance became apparent to most. This has allowed the farm to nurture the meadows on the flood plains, through the lack of fertiliser or spray use the grassland now supports a highly diverse sward; the hedgerows have been allowed to thicken and grow out providing natural corridors for the wildlife. The orchards are 'old' and whilst they are still managed through pruning, they provide an ecological haven for a mass of birds, insects and fauna due to the lack of spraying. Three fields have been allowed to re-wild years before the current trend set in. It was simply a mindset that the farm needed to support its agricultural produce but not at the detriment of the ecology that has grown up over the past 70 years through management and protection from the same family.

Farming Enterprise

The farm is currently owned by a family Trust and the outlying fields by Mrs Emma Ainslie. It is farmed in partnership and supports the apple orchards with the grazing left for the sheep and cattle enterprise. There are also approximately 15 horses on site either for personal use or as part of the reduced stud business. The farm supports not only its own sheep flock but also cattle graze over it in the summer months as part of the larger farming business all located within a 10-mile radius. This includes a Jersey dairy herd, 1,100-ewe sheep enterprise, arable and store cattle business. Moat Farm is very much one of 3 farms in the family business and is key to our spring/summer grazing.

Moat Farm also provides a forage supply with the meadows situated on the flood plain providing an important high-quality meadow hay crop.

The farm benefits from an HLS agreement (renewed Jan 2021) which recognises much of the diversity in the grasslands adjacent to the river Rother.

Practical farm management

The farm is predominantly a High Weald traditional livestock farm. Due to the extremely high ecological status it is restricted on the use of pesticides and fertilisers and therefore where grass crops are harvested, or grazing is available the total acreage available is important, in essence we have medium yielding grass crops but in return we support a very high ecologically valuable area; it is a trade-off that works for us as farmers and for the environment. The most fertile and productive ground is found on the lower meadows which is good fattening ground as well as providing strong clean hay making pastures. In the winter this area continues to provide excellent grazing with good fast draining land due to the natural flood plain contours. A flock of approximately 150 ewes will be over-wintered with cattle housed in the barn. The pony stud also requires grazing and there is a natural rotation between the sheep and horses.

Flooding

As is common on flood plains the land is prone to flooding between October and April. The river Rother acts as our southern boundary and therefore we bear the brunt of the very quick and forceful flood waters that come through from below Robertsbridge. In the winter we are on flood alerts for 20% of the time. As we need to be able to graze this ground, we simply manage the flooding issue by frequently moving sheep and horses to higher ground when an alert comes through. It is not simply the quantity of rain that determines the flood levels and speed, we are affected by the tide levels especially the early spring tides as well as the management of the flood protection barriers further down-stream.

However, alerts are unreliable with floods either not appearing or being called very late, as was seen in 2020/21. It is therefore necessary simply to keep an eye on the river and react accordingly. This requires immediate access to the 26 acres on the south of the dismantled railway line, known as the Bottom Meadows.



Pony being led through flood water at Moat Farm 27 December 2020

Horses can be led out of floods and whilst these are tricky, they can generally be helped through flood waters and saved. Sheep, however, are at far greater threat to their lives simply because they don't swim, don't float and will not be corralled through water. In addition, the collie dogs that are highly trained sheep movers and which the sheep respect cannot be used in flood water due to the risk of losing them down stream. It is absolutely imperative to retain the 4 gateways that cross from the Bottom Meadows over the dismantled railway onto the Lower Meadows and across to the higher ground as an emergency escape route. Once across the old embankment we have a further 4 access routes that we can move sheep onto the higher ground. To propose the loss of these gates would simply be condemning the sheep and our livelihood to a watery grave. There was a valid reason why these 4 gates were required when the railway line was built – this reason has not changed and if anything, the flooding has become far more severe.



Flood viewed from Moat Farm Cottage facing south 17th February 2020

Even in the summer the 4 gates are used frequently simply to move animals efficiently around the farm as well as reducing the stress on the animals and as always ensuring a high level of welfare. It has been suggested that a 'track' could be laid alongside the proposed rail line but its not clear what this is meant to achieve and certainly provides no benefit to the farm, its animals or the environment and is simply an additional man-made intrusion onto a floodplain and area of ecologically significant value.



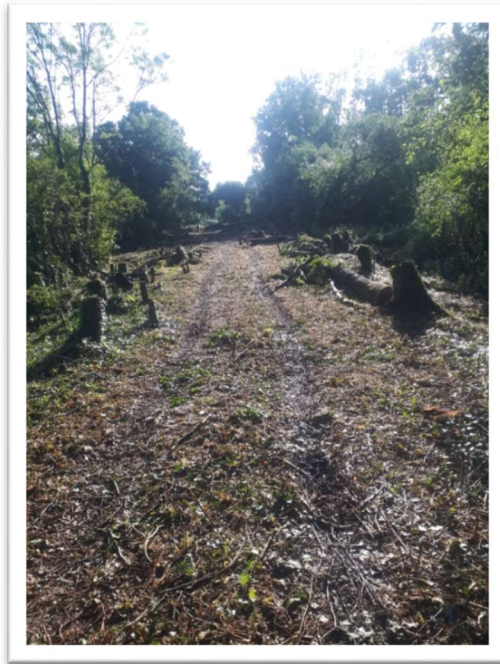
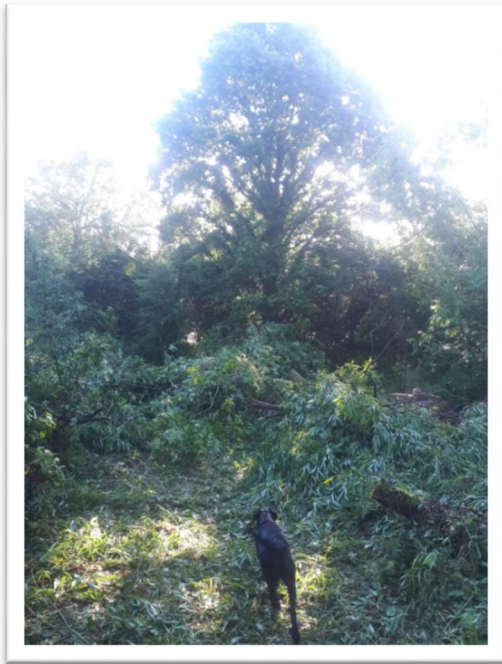
Flooded trackbed from B2244 towards Austin bridge 6th March 2020

To be absolutely clear the farm requires all 4 access points to function, especially in the winter months. We have worked this farm for the past 74 years, we know its foibles, we know how it floods and we know how to manage it; there can be no reasonable argument or convoluted consultants review that can outweigh the decades of hard work and tough experiences farming this land that could support the closure of crossings.

Ecology

Moat Farm is a jewel in the High Weald. It provides a major flooding river, flood plains, old apple orchards, re-wilded fields and very uniquely a 'wet woodland' . It has also benefitted from the lack of ploughing, no fertiliser use, low grazing density and historically very low use of sprays and in the last 8 years no sprays on the orchards at all. I refer to the annexes attached providing the various details of bird life, including the red listed kingfishers, nightingales, skylarks and many more; to the confirmation of the dormice population across the farm; the importance of the Bryophytes (mosses) and the delicate nature and balance for these extraordinary species to survive (including the *Pylaisia polyantha* – only found twice before in Sussex in living memory); to the moth population heavily reliant on 'corridors' to move around and the presence of the Blue Underwing moth. The thought that this should be put at risk by the felling and heavy construction of a railway line not only in the immediate destruction of the woodland on the flood plain but also the knock-on effect on the changed flood characteristics. But also the presence of steam and diesel engines 18 times a day and the vast pollution that these

introduce both from their exhausts but also the noise and disruption created by these hugely inefficient engines for what is, in essence, a very marginal tourist attraction.



Tree felling east of Austins bridge and clearance of undergrowth for trackbed

Above images show the green habitat prior to RVR's felling work to their new construction site between the B2244 and Austins bridge. It proves the horrific impact that this proposal would have on the woodland and habitat on Moat Farm.

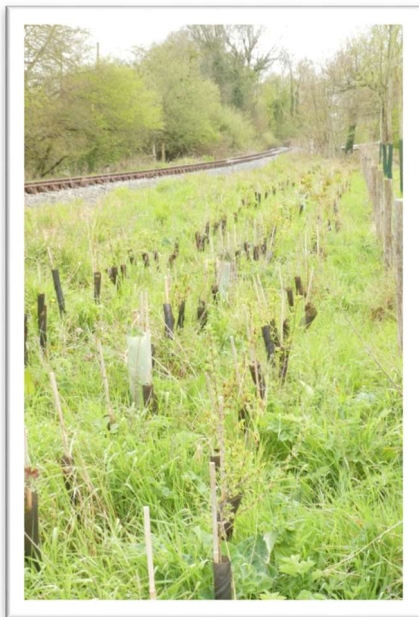


Aerial view from Austins bridge facing west over Moat Farm 9th May 2021



Aerial view from Austins bridge facing east towards B2244 9th May 2021

This woodland area was home to nightingales, dormice and a host of wildlife. The photos below show an inexcusable scar across the flood plain, the woodland was removed and ‘replanted’ 4500m to the west. The consultants argued that the wildlife would simply move west. The images below show RVR’s hopeless ‘replacement habitat’.



Replanting from RVR to replace removal of mature woodland 8th May 2021

It speaks volumes of RVR's sincerity and honesty that they removed the trackbed woodland between B2244 and Austins bridge prior to planting the replacement tree whips and so in essence the wildlife had nowhere to go apart from onto Moat Farm.

Moat farm is truly one of a few farms in the Weald that already meets and surpasses the environmental targets that the government and wildlife organisations are spending huge amounts of time and money to try and create. To then support an application which cuts a huge wound through the middle of it which then affects the whole area is insanity. The benefits are for the very few but the impact on all those in the local area, on the farm and the wildlife are severe. We have encouraged many in the local area to visit the farm and without exception, supporters of the proposal or not, everyone has walked away with a better understanding of the unique and fragile balance that the farm provides and the need to keep it protected from misguided enthusiasts.

MOAT FARM BIRD SURVEY 14th & 16th MAY 2019

(06:30-09:00 on 14th, 20:30-23:00 on 16th. Fine weather on both visits, with little wind)

Mark Mallalieu mallalieu@gmail.com

Species are coloured coded. Red = High Conservation Concern Amber = Medium Conservation Concern.

	Species	Houses	Fields by houses	Pond by houses	Orchard	Woodland/ hedge boundaries to orchard	Floodplain fields and hedges	Willow swamp	Top fields & woods	Total	Highest breeding evidence
1	Black-headed Gull				1					1	F
2	Blackbird	1	2		4	4	3		2	16	FF
3	Blackcap					3	6	1	4	14	S
4	Blue Tit				3	1	3			7	P
5	Bullfinch						3			3	P
6	Carrion Crow				2		7			9	H
7	Chaffinch								2	2	S
8	Chiffchaff						9	1	3	13	S
9	Collared Dove	1								1	S
10	Common Buzzard						1			1	H
11	Cuckoo						1		1	2	S
12	Dunnock					1	2			3	S
13	Garden Warbler						2			2	S
14	Goldcrest								2	2	S
15	Goldfinch				3		3			6	S
16	Great Spotted Woodpecker				3		1			4	H
17	Great Tit				3		4		2	9	S
18	Green Woodpecker					1			1	2	H
19	Herring Gull					1	8		5	14	F
20	House Sparrow	20								20	H
21	Jackdaw	3	2		6				15	26	P
22	Kestrel						1			1	H
23	Lapwing						1			1	F

24	Lesser Whitethroat					4			4	S	
25	Linnet		1						1	H	
26	Long-tailed Tit					10			10	FL	
27	Mallard			7		2			9	FL	
28	Magpie				1	1			2	H	
29	Mistle Thrush		3						3	P	
30	Moorhen			1					1	H	
31	Nightingale					2		2	4	S	
32	Nuthatch					1			1	H	
33	Pheasant		1			2	1		2	6	H
34	Pied Wagtail	2								2	P
35	Robin		1		1	3	9	1	2	17	S
36	Skylark						1			1	S
37	Song Thrush						3		1	4	S
38	Starling				1					1	H
39	Stock Dove				1		4		1	6	S
40	Swallow	3			1					4	P
41	Tawny Owl						2		2	4	P
42	Treecreeper						2			2	S
43	Whitethroat		1				1		1	3	S
44	Woodpigeon		2		6	1	48		6	63	P
45	Wren	1			2	4	20	1	5	33	S
46	Yellowhammer		1				1			2	S
	Other species reported by owners to be present at this season:				Codes for breeding evidence		F = Flying over				
	Barn owl						FF = Adult carrying food or faecal sac				
	Little Owl						H = Habitat				
	Kingfisher?						P = Pair in suitable habitat				
							S = Singing male in suitable habitat				
	Other possible breeding species to look out for (not comprehensive):					Mammals:					
	Jay						Badger				
	Greenfinch						Fallow Deer				

Bryophytes at Moat Farm, Salehurst

Revised 8th May 2015

1. Surveys

An initial survey was carried out by the author over two days, on the 5th and the 18th December 2014. A further visit in May 2015 added several more species, mainly from the Willow carr area.

Moat Farm is a large area of land in East Sussex, not far from Robertsbridge. It is mostly used for grazing ponies but there are some large areas of apple orchard. Everything is slightly neglected in a rather charming way that allows wildlife to thrive which the owner, Cherry Michell, enjoys immensely. Thus there are patches of scrub, some tangled willow carr, old ponds with willows creeping in from the edges. The orchards are full of ancient trees, probably not the best for high yields of fruit but covered in bryophytes. The walls and the roofs provide excellent habitats too. There is a nice ghyll along one edge of the site and some ancient woodland. Along the southern boundary, the River Rother has some excellent crumbling banks.

The soil is Wadhurst clay at the top of the site, progressing through Ashdown sandstone and siltstone on the slopes (including most of the ghyll) to alluvial sand and clay down by the river. At times, the river floods over a wide area.



One of the hummocks in poached soil by the top pond. The light green patches are the unusual moss, Weissia rostellata.

The table below indicates the frequency of the plants found in the parts of the site surveyed. A further column describes how common the species is in Sussex generally. The list is approximately in the order found. The GPS used for obtaining grid references will mostly have been accurate to about 10m. Generally only the grid reference of the first sighting is given although multiple records are listed for some of the more interesting species.

The names follow the Field Guide (Mosses and Liverworts of Britain and Ireland: A Field Guide) published by the British Bryological Society).

All critical species were sampled and checked microscopically.

First day – 5th December 2014

English Name	Scientific Name	Grid Ref	Location and Frequency	Occurrence in Sussex
Small Hairy Screw-moss	<i>Syntrichia laevipila</i>	TQ758244	Frequent on old apple trees throughout orchard.	A frequent epiphyte on Ash, Elder and fruit trees.
Marble Screw-moss	<i>Syntrichia papillosa</i>	TQ758244	Abundant on old apple trees in orchard.	Rather scarce as an epiphyte, sometimes in gardens.
Green Yoke-moss	<i>Zygodon viridissimus</i>	TQ758244	Abundant on old apple trees in orchard.	Common on older trees, prefers a well-lit situation.
Even Scalewort	<i>Radula complanata</i>	TQ758244	On old apple trees in orchard. Also in ghyll woodland.	Frequent on smooth-barked trees in well-lit positions.
Capillary Thread-moss	<i>Bryum capillare</i>	TQ758244	Abundant on old apple trees in orchard.	Often abundant on stumps and walls and as an epiphyte.
Cypress-leaved Plait-moss	<i>Hypnum cupressiforme</i>	TQ758244	Abundant on old apple trees in orchard.	Generally abundant in woodland.
Clustered Feather-moss	<i>Rhynchostegium confertum</i>	TQ758244	Abundant on old apple trees in orchard.	Common on tree bases, roots and also on walls.
Swan's-neck Thyme-moss	<i>Mnium hornum</i>	TQ757246	Abundant on banks along sunken trackway and elsewhere in old woodland.	Very common on banks in well-established woodland.
Common Feather-moss	<i>Kindbergia praelonga</i>	TQ757246	Banks along sunken trackway. Also abundant in most woodland and on soil in orchard.	Abundant in woodland.
Juicy Silk-moss	<i>Plagiothecium succulentum</i>	TQ757246	Banks along sunken trackway.	Common in woodland generally.
Common Pocket-moss	<i>Fissidens taxifolius</i>	TQ757246	Banks along sunken trackway and stream banks in the ghyll.	Common on a variety of soils, prefers damp places.
Silky Forklet-moss	<i>Dicranella heteromalla</i>	TQ757246	Banks along sunken trackway. Also commonly on banks elsewhere.	Common on banks in woodland on acid soils.
Creeping Feather-moss	<i>Amblystegium serpens</i>	TQ757246	Frequent on tree roots.	Common as an epiphyte, particularly on Elder. Equally common on old walls.
Fox-tail Feather-moss	<i>Thamnobryum alopecurum</i>	TQ757246	Base of Ash tree. Also in the upper part of the ghyll.	Common in woodland, particularly on the chalk. Also on old walls.
Common Pincushion	<i>Dicranoweisia cirrata</i>	TQ758246	On apple trees, fruiting.	On bark of living trees and on fence posts, common in acid areas.
Lesser Pocket-moss	<i>Fissidens bryoides</i>	TQ758247	Clay banks in ghyll.	Common on damp soil in gardens and woods.

English Name	Scientific Name	Grid Ref	Location and Frequency	Occurrence in Sussex
Swartz's Feather-moss	<i>Oxyrrhynchium hians</i>	TQ758247	Clay banks in ghyll.. Also on river bank.	Common by streams in woods and also on chalk downland.
Rough-stalked Feather-moss	<i>Brachythecium rutabulum</i>	TQ758247	Clay banks in ghyll. Also on Apple trees and many other habitats.	Usually abundant on a variety of substrates.
Flat Neckera	<i>Neckera complanata</i>	TQ758247	Base of Ash tree in ghyll.	Frequent on ash trees and old walls.
Hart's-tongue Thyme-moss	<i>Plagiomnium undulatum</i>	TQ758247	Banks in ghyll, often growing very large.	A typical streamside species.
Pointed Spear-moss	<i>Calliergonella cuspidata</i>	TQ759246	In rough grassland. Also near river and ponds.	Very common in short grassland such as north-facing chalk downland and in damp places by streams.
Spreading-leaved Beardless-moss	<i>Weissia rostellata</i>	TQ760246	Vertical edges of hummocks in poached soil at edge of pond; numerous patches.	Very uncommon on reservoir margins where it is often threatened by aliens such as <i>Crassula</i> and more rarely on pond margins.
Delicate Earth-moss	<i>Pseudephemerum nitidum</i>	TQ760246	Poached soil at edge of pond.	Damp soil, often in woodland or other shady places, generally distributed.
Common Pottia	<i>Tortula truncata</i>	TQ760246	Abundant on poached soil at edge of pond. Also on river bank.	Very common on damp soil.
Wood Bristle-moss	<i>Orthotrichum affine</i>	TQ760248	On Willow but quite scarce. See also comments about orchards.	Common, preferring well-lit trunks on trees such as willow, ash and elder.
Lesser Yoke-moss	<i>Zygodon conoideus</i>	TQ760248	On Willow.	Less common than <i>Z. viridissimus</i> but generally distributed on old trees, particularly ash.
Blueish Veilwort	<i>Metzgeria fruticulosa</i>	TQ760248	Uncommon on Willow.	Frequent in wet woodland.
Cape Thread-moss	<i>Orthodontium lineare</i>	TQ761246	On stump in wooded valley.	An introduced species, now common on stumps.
Forked Veilwort	<i>Metzgeria furcata</i>	TQ761246	Frequent on Willow.	Common on trees.
Lateral Cryphaea	<i>Cryphaea heteromalla</i>	TQ761246	On Willow, quite scarce.	Epiphytic on many trees, particularly Elder. Still increasing following the Clean Air Act (1956) and now common in many parts.
Minute Pouncewort	<i>Cololejeunea minutissima</i>	TQ761246	On Willow.	Once a rarity, now common in southern parts of Sussex.

English Name	Scientific Name	Grid Ref	Location and Frequency	Occurrence in Sussex
Common Smoothcap	<i>Atrichum undulatum</i>	TQ761246	Banks in woodland.	A common woodland plant.
Marble Screw-moss	<i>Syntrichia papillosa</i>	TQ761247	Abundant on old apple trees in orchard.	Rather scarce as an epiphyte, sometimes in gardens.
Pink-fruited Thread-moss	<i>Pohlia melanodon</i>	TQ762247	On anthills in old meadow.	On clay banks on neutral to basic soils, often by streams.
Great Scented Liverwort	<i>Conocephalum conicum</i>	TQ763246	Common on stream banks in ghyll.	Locally common on stream banks except on acid soils.
Bifid Crestwort	<i>Lophocolea bidentata</i>	TQ763246	Rocky stream bank in ghyll.	Frequent on banks, stumps and logs.
Dotted Thyme-moss	<i>Rhizomnium punctatum</i>	TQ763246	Rocky stream bank in ghyll.	Common on soil, sandstone rocks and rotting logs in wet woodland.
Long-beaked Water Feather-moss	<i>Platyhypnidium riparioides</i>	TQ763246	Rocks in ghyll stream.	Frequent on hard surfaces in streams.
Petty Pocket-moss	<i>Fissidens pusillus</i>	TQ763246	Rocky stream bank in ghyll	Characteristically found on small rocks in streams; common in the Weald, less so elsewhere.
Endive Pellia	<i>Pellia endiviifolia</i>	TQ763246	Stream banks in ghyll.	Common in wet places on chalky soils or where there is some base enrichment.
Crisped Pincushion	<i>Ulota crispa</i>	TQ762243	On Willows in swamp.	Fairly common, present in most woods in the county.
Blueish Veilwort	<i>Metzgeria fruticulosa</i>	TQ762243	On Willows in swamp.	Frequent in wet woodland.
Fairy Beads	<i>Microlejeunea ulicina</i>	TQ762243	On Willows in swamp.	Common in the N of the county, tends to be replaced by <i>Cololejeunea minutissima</i> in the S.
Supine Plait-moss	<i>Hypnum resupinatum</i>	TQ763242	On Ash at edge of swamp. Also frequent in parts of the orchard.	Common, particularly on smooth-barked trees.
Thickpoint Grimmia	<i>Schistidium crassipilum</i>	TQ766240	On concrete by railway bridge.	Frequent, and increasing, on walls etc.
Wavy Beard-moss	<i>Didymodon sinuosus</i>	TQ766240	On concrete by railway bridge.	Occasionally found on damp walls.
Soft-tufted Beard-moss	<i>Didymodon vinealis</i>	TQ758237	Brick remnants of bridge over river.	On walls and also on bare patches of soil in chalk grassland.
Olive Beard-moss	<i>Didymodon tophaceus</i>	TQ758237	Brick remnants of bridge over river.	Scarce on damp mortar in walls and damp calcareous soil.

English Name	Scientific Name	Grid Ref	Location and Frequency	Occurrence in Sussex
Overleaf Pellia	<i>Pellia epiphylla</i>	TQ758237	Brick remnants of bridge over river, the only place found.	Common on damp soil by streams, neutral to acidic.
Cylindric Beard-moss	<i>Didymodon insulanus</i>	TQ758237	Brick remnants of bridge over river.	Common on soil and rock.
Small-mouthed Beardless-moss	<i>Weissia brachycarpa</i> var. <i>brachycarpa</i>	TQ757238	On lip of eroded river bank.	Very rare on damp clay soil.
Whitish Feather-moss	<i>Brachythecium albicans</i>	TQ757238	River bank.	Common on acid soils such as heathland.
Variable Forklet-moss	<i>Dicranella varia</i>	TQ757238	River bank.	Common on neutral to basic soils on damp bare soil.
Grey-cushioned Grimmia	<i>Grimmia pulvinata</i>	TQ758243	Walls near house; common.	Common on walls and roofs.
Soft-tufted Beard-moss	<i>Didymodon vinealis</i>	TQ758243	Walls near house.	On walls and also on bare patches of soil in chalk grassland.
Heath Star Moss	<i>Campylopus introflexus</i>	TQ758243	On top of sandstone block wall.	An introduced species, now abundant on heathland.
Common Threadwort	<i>Cephaloziella divaricata</i>	TQ758243	Through <i>Campylopus introflexus</i> on top of wall.	Frequent on acid soils such as heathland.
Wall Thread-moss	<i>Bryum radiculosum</i>	TQ758243	On old walls; frequent.	On walls, bridges and similar locations, probably quite common but under-recorded.
Silver-moss	<i>Bryum argenteum</i>	TQ758243	On old walls.	Abundant on pavements and disturbed ground.
Common Pincushion	<i>Dicranoweisia cirrata</i>	TQ758243	On main roof of farmhouse; numerous large cushions.	On bark of living trees and on fence posts, common in acid areas.
Wall Screw-moss	<i>Tortula muralis</i>	TQ758243	On walls; abundant	Ubiquitous on walls.

Additions 18th December 2014

English Name	Scientific Name	Grid Ref	Location and Frequency	Occurrence in Sussex
Crimson-tuber Thread-moss	<i>Bryum rubens</i>	TQ760246	Poached soil at edge of pond.	Disturbed ground; common on sandy and chalky soils
Common Frillwort	<i>Fossombronina pusilla</i>	TQ760246	Poached soil at edge of pond.	Frequent on damp, disturbed soil such as ruts in woods. Possibly commoner in the west.
Tozer's Thread-moss	<i>Epipterygium tozeri</i>	TQ760246	Poached soil at edge of pond.	Very scarce on damp sand or clay banks, particularly near streams.
Redshank	<i>Ceratodon purpureus</i>	TQ760246	Poached soil at edge of pond.	Very common on acid to neutral soils, often in gardens.

English Name	Scientific Name	Grid Ref	Location and Frequency	Occurrence in Sussex
Great Plait-moss	Hypnum lacunosum	TQ759245	Soil in orchard.	Frequent on light soils but not an early colonist.
Lyell's Bristle-moss	Orthotrichum lyellii	TQ759245	Apple trees; occasional but much eroded.	Fairly common in unpolluted areas.
Dilated Scalewort	Frullania dilatata	TQ759245	Apple trees.	Common throughout Sussex.
Silky Wall Feather-moss	Homalothecium sericeum	TQ759245	Apple trees.	Common on ash trees and on walls.
Tall-clustered Thread-moss	Bryum pallescens	TQ757624 38	Abundant on a brick wall underneath galvanised panels of barn.	Very rare on soil, tarmac or masonry underneath galvanised steel structures.
Beech Feather-moss	Cirriphyllum crassinervium	TQ757239	Base of Oak by river where it forms large patches on the spreading roots.	Tree roots and banks in calcareous woodland; commonest in the west. Also on tree bases in the flood zone of the larger rivers.
Tozer's Thread-moss	Epipterygium tozeri	TQ757239	Friable soil on river bank.	Very scarce on damp sand or clay banks, particularly near streams.
Green-tufted Stubble-moss	Weissia controversa var. controversa	TQ757239	Friable soil on river bank.	Occasional on sandy or clay soil banks.
Neat Feather-moss	Pseudoscleropodium purum	TQ757239	River bank.	Very common in short grassland.
Greater Featherwort	Plagiochila asplenioides	TQ763247	Ghyll stream banks.	On banks in old woodland; generally distributed.
Short-leaved Pocket-moss	Fissidens incurvus	TQ763247	Ghyll stream banks.	Common on banks on calcareous soil.
Variable-leaved Crestwort	Lophocolea heterophylla	TQ763247	Tree roots by stream.	Common on banks and logs.
Slender Mouse-tail Moss	Isothecium myosuroides	TQ762249	Tree bases.	Common on the base of larger trees in woodland.
Bank Haircap	Polytrichastrum formosum	TQ761249	Ghyll stream banks; scarce.	Common on banks in woods.
Common Striated Feather-moss	Eurhynchium striatum	TQ761249	Ghyll stream banks.	Common in old woodland.
Common Tamarisk-moss	Thuidium tamariscinum	TQ761249	Ghyll stream banks.	Common in old woodland, needs a damp soil.
Hair-pointed Grimmia	Grimmia trichophylla	TQ758243	Top of sandstone garden wall, several cushions.	Rare on walls and roofs.

Additions 8th May 2015

English Name	Scientific Name	Grid Ref	Location and Frequency	Occurrence in Sussex
Elegant Bristle-moss	<i>Orthotrichum pulchellum</i>	TQ762243	Frequent on Willows in carr (the 'Bog').	Frequent on Ash, Field Maple and particularly on Willows in damp places. This species has increased dramatically in recent years.
Shaw's Bristle-moss	<i>Orthotrichum striatum</i>	TQ762243	Found on several Willows in carr.	A rather scarce epiphyte but apparently increasing rapidly.
Slender Bristle-moss	<i>Orthotrichum tenellum</i>	TQ762243	On at least 3 Willows in carr.	Frequent, particularly in the S of the county, and increasing.
Bruch's Pincushion	<i>Ulota bruchii</i>	TQ762243	On Willows in carr.	A common epiphyte. Often misidentified as <i>U. crispa</i> and vice-versa.
Frizzled Pincushion	<i>Ulota phyllantha</i>	TQ762243	On several Willows in carr.	An epiphyte with a tendency to a coastal distribution but also occasionally found at inland sites. Probably increasing.
Kneiff's Feather-moss	<i>Leptodictyum riparium</i>	TQ762243	On rotting logs in carr; frequent.	Frequent to common on roots and other hard surfaces near water.
River Feather-moss	<i>Brachythecium rivulare</i>	TQ762243	On the ground in Willow carr.	Frequent at lake margins and by streams.
Jagged Germanderwort	<i>Riccardia chamedryfolia</i>	TQ762243	On the ground in Willow carr at edge of clearing.	Occasional in damp places in woodland and on stream banks.
White-tipped Bristle-moss	<i>Orthotrichum diaphanum</i>	TQ762243	On Willow in carr.	Often common on trees in polluted areas but also found generally in well-lit areas in woodland and occasionally on walls.
Many-fruited Leskea	<i>Leskea polycarpa</i>	TQ762243	On Willow in carr.	Principally found in the flood zone of large rivers, low down on the roots of trees which are periodically inundated.
Many-flowered Leskea	<i>Pylaisia polyantha</i>	TQ76172440	On horizontal boughs of two Apple trees in orchard.	Very rare. Just two previous records in Sussex, the first in the 19th century by William Mitten, the second by Tom Ottley from an Apple tree in Framfield in 2013.
St Winifrid's Moss	<i>Chiloscyphus polyanthos</i>	TQ757238	On river bank.	Frequent on rocks and roots in streams, particularly in the Weald.

2. Notes

89 species have now been seen which is good for mixed habitat such as this. There will be yet be more to come however and with several rarities already on the list, Moat Farm is clearly quite a special place.

After the first two visits it was thought that the best find was probably *Weissia rostellata*. This is very scarce in Sussex with most records coming from reservoir margins in late autumn. Unfortunately such habitats are increasingly threatened by water level controls (the water companies can now often pump water into reservoirs to maintain levels) and also by invasive aliens such as *Crassula* which can not be controlled by spraying near to a source of drinking water. Away from reservoirs there is just one recent record in Sussex from a pond near Horsham. At Moat Farm it is growing on hummocks of soil at the edge of a pond at the top of the land in a pasture currently used for grazing a pony. There are numerous patches of it on the vertical sides of these hummocks and it appears quite healthy. Growing with it is much *Tortula truncata* and *Ceratodon purpureus* but also some *Epipterygium tozeri*, a much scarcer plant.

The discovery of *Pylaisia polyantha* in the orchard is very interesting. The first record for the county was from Newtimber on the downs by William Mitten. The exact date is unknown but probably around 1880. There were no further records until the author found it growing on an old Apple tree in his garden in 2013. In spite of much searching in the Framfield area no further plants have been located. Now it has been found on at least two more old Apple trees and with thousands of trees at Moat Farm there is presumably more there. This raises the possibility that it could occur quite widely in this particular habitat but old orchards are becoming quite uncommon so an attempt will be made to find more. It is quite a scarce plant nationally.

Apart from the *Pylaisia* the very old trees in the orchards are often well-covered with bryophytes. Although there are some huge patches of *Syntrichia papillosa* and also *Syntrichia laevipila*, the trees ought to be rich in *Orthotrichum* species too but these are actually hard to find until the denuded stems of *O. lyellii* are spotted. In fact, some of the epiphytes here have lost most of their leaves and it is challenging to identify them based just on stems. It is suspected that the spray used for killing weeds around the base of the trees is occasionally drifting up into the branches and affecting the mosses growing there. In spite of that comment, the sheer quantity of *Syntrichia papillosa* is unlike anything seen by the author in Sussex.

The ghyll is very nice with many old Ash trees and a stream with a few rocks. The soil is slightly calcareous here and the *Pellia* on the stream banks is all *P. endiviifolia* rather than the commoner species of acid soils, *P. epiphylla*. There are a few rocks in or by the stream and these have good patches of *Platyhypnidium riparioides* but the rocks are rather small and infrequent and no *Scapania undulata* was found.

The river bank is often scoured when the River Rother is in flood. This leaves bare crumbling soil which is then colonised by mosses. One of these, *Weissia brachycarpa* var. *brachycarpa* is very rare in Sussex with only a few records, the last being from the top of an anthill near Buxted in 2012. It requires a clay soil and is never found on chalk, unlike its other variety, var. *obliqua* which is common in calcareous habitats. Yet another *Weissia*, *W. controversa*, is on the river bank as well as the rather scarce *Epipterygium tozeri*. The visit in May 2015 added *Chiloscyphus polyanthos* and there are likely to be more good finds there in the future. The flood zone is also responsible for the presence of *Cirriphyllum crassinervium* on the spreading roots of a large Oak tree near the river bank, it being particularly characteristic of such habitats.

One moss that is particularly interesting is *Bryum pallescens*. This has the ability to grow in places heavily polluted by heavy metals, particularly zinc. It is growing in great abundance on an old wall directly under some galvanised corrugated steel panelling at one end of a barn. The water drips off the sheeting, carrying a little zinc with it each time. Hardly anything else could grow in those conditions but this particular *Bryum* thrives in such habitats. There are only a few Sussex records, recent ones being from a motorway bridge and under a pylon.

Grimmia trichophylla was discovered on the old wall at the bottom of the garden where there are numerous cushions of it growing with other typical wall-loving species such as *Didymodon vinealis*. The *Grimmia* is occasionally found on churchyard walls but is quite a scarce plant in the east of the country generally.

3. Acknowledgements

Cherry and Vanessa have been extremely hospitable and very interested in the moss survey. Cherry also helped by speeding up getting around the farm with the aid of her four-wheel drive 'Mule'. Fran Southgate from the Sussex Wildlife Trust is thanked for suggesting that Moat Farm could be such an interesting place to visit. The wildlife trust has also instigated other surveys with more to come.

Tom Ottley

Bryophyte Recorder for Sussex

January 2015, revised May 2015

Moths trapped at Moat Farm on night of 2nd September 2014

ID Nos	Common Name	Nos
1651	Chinese Character	2
1680	Maiden's Blush	1
1682	Blood Vein	3
1742	Yellow Shell	2
1906	Brimstone Moth	9
1914	Dusky Thorn	2
1955	Common White Wave	1
1961	Light Emerald	9
2098	The Flame	1
2102	Flame Shoulder	6
2107	Large Yellow Underwing	17
2111	Ls Broad-bordered Yellow Underwing	5
2123	Small Square-spot	3
2126	Setaceous Hebrew Character	6
2134	Square-spot Rustic	25
2178	Feathered Gothic	21
2194	White-point	2
2199	Common Wainscot	2
2296	Centre-barred Sallow	4
2297	Copper Underwing	1
2306	Angle Shades	3
2361	Rosy Rustic	3
2364	Frosted Orange	1
2450	Spectacle	1
2451	Clifton Nonpareil	1
2477	Snout	1

Moat Farm, Salehurst, East Sussex

Summary Report of Site Visit 10/7/15

This report summarises the findings of a site visit to Moat Farm, Salehurst, East Sussex undertaken by Kate Ryland of Dolphin Ecological Surveys (Dormouse survey licence number 2015-13705-CLS-CLS).

The farm lies at central grid reference TQ760249 on the north side of the River Rother near the village of Salehurst, east of Robertsbridge in East Sussex.

The visit took place on 10th July 2015 in warm, sunny weather conditions.

Purposes of the Visit

- To carry out an inspection of dormouse nest boxes that had been installed on the farm some years ago
- To carry out a preliminary NVC assessment of as many of the grassland fields in the floodplain part of the holding as time allowed
- To give advice on techniques for putting up dormouse nest tubes in scrub and woodland habitats along a disused railway line

Moat Farm Overview

A rapid vehicle tour allowed a very brief overview of the habitats present across the whole farm and the land management regime.

Moat Farm appears to be a good example of a relatively unchanged medieval farmstead, typical of the High Weald. A very good range of semi-natural habitats have been retained within the apparently low-intensity farming system.

The farming enterprise is largely focused on the apple orchard with grazing livestock now restricted to ponies and sheep, though in previous years there was a dairy herd at Moat Farm. Many of the grassland fields are cut for hay with aftermath grazing though some are used as permanent pasture.

Habitats and Features Present

- Veteran and ancient trees including old pollards and coppice stools
- Ancient semi-natural woodland
- Old orchard
- Wet woodland
- Extensive, intact hedgerow network
- Mixed scrub and high quality ecotones
- Ditches
- The River Rother
- Ponds
- Secondary woodland and scrub with wet flushes along a disused railway line
- Archaeological features including boundary banks, a significant routeway and extensive earthworks in the vicinity of the river and old abbey
- Several old, tile hung buildings around the farmstead with high potential for bat roosts

- Protected species (under European and UK law) are likely to occur in suitable habitats on the farm. In particular dormouse (presence confirmed during the site visit), bats, great crested newt, badger, reptiles and breeding birds.
- Invertebrate assemblages may be of high value since the semi-natural habitats present are diverse and provide good structural variation across the site.
- The unusually high cover of nectar and pollen-rich species over an extensive area of grassland is likely to provide a very important resource for declining pollinator species such as bumblebees.

Results of the Visit

Dormouse box check

An unknown number of dormouse boxes were erected in several wooded locations across Moat Farm some years ago. It appears that these boxes have not been checked since they were installed.

The first set of boxes to be checked were in an ancient wooded routeway that runs northwards from the farmstead along the western edge of the orchard. The routeway incorporates a sunken track, multiple banks, ditches and mixed coppice woodland habitat.

In one of the first boxes inspected (at grid reference TQ75803 24651) was a torpid adult male dormouse weighing 18.5g.

The dormouse was in a rather perfunctory nest which comprised a very small woven core of grass and a huge quantity of green hazel leaves which completely filled the rest of the nest box.

Once the presence of dormice had been confirmed at Moat Farm the box check was suspended so that more time could be spent assessing grassland areas.

It is recommended that the rest of the dormouse boxes are checked later in the season to provide additional information about the distribution of dormice across the farm.

Grassland NVC Assessment

MG5 Grassland

MG5 grassland, the *Cynosurus cristatus* – *Centaurea nigra* grassland community as described in the National Vegetation Classification (NVC) system (Rodwell 1992), is a variable community but it is associated most closely with traditionally managed lowland hay meadow on circumneutral soils, usually managed with aftermath grazing.

This type of grassland characteristically has a high cover of quite widespread species of wildflowers and grasses rather than a strong association with particularly uncommon plants, although the best examples of MG5 meadows that have remained largely unimproved often support key indicator species.

Species-rich, lowland hay meadows of this type are a declining and threatened habitat of high nature conservation value. They are also a priority habitat as listed in Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006.

An oft-quoted figure of 97% of species-rich lowland meadows are believed to have been lost since the mid-20th Century, largely as a result of agricultural intensification.

Moat Farm Grassland

Moat Farm has unusually extensive areas of species-rich grassland habitat. Much of the grassland is referable to the MG5 community and largely resembles the *Lathyrus pratensis* sub-community MG5a

In some fields a transition towards the taller, coarser swards typical of the *Centaurea nigra* sub-community of *Arrhenatherum elatius* grassland (MG1e) is apparent. This suggests either increasing nutrient levels or decreasing/changing management intensity.

In places the observed ratio of forbs (broadleaved plants) to grasses in the fields surveyed is very high and typically legumes and rosette plants are prominent components of the sward.

The fields at Moat Farm show a degree of variation, due to management history and local variations in soil conditions, but all those identified as having high botanical interest have, at least locally, a very high proportion of common knapweed in the sward, a range of native grasses and high frequencies of common associated species such as birds-foot-trefoils, red clover, meadow vetchling, ribwort plantain and yarrow.

Other species that occur with some frequency in some of the fields include stands of creeping thistle, common couch, meadowsweet and greater birds-foot-trefoil associated with damp areas and riverbanks, and hogweed.

There are further areas of MG5 grassland on higher ground in the northern parts of Moat Farm, which were glimpsed during the initial farm tour. Time constraints prevented an assessment of these northern fields during the visit on 10th July so it should be noted that this survey does not cover all the areas of species-rich grassland that occur at Moat Farm.

There are some areas of largely improved floodplain grassland of very minimal botanical interest. These fields were given only the most cursory of inspections during the site visit.

Dormouse nest tube survey

50 dormouse nest tubes have been purchased by the landowner to allow a dormouse survey of the disused railway line to take place.

The landowner and another volunteer were given instructions on the correct way to assemble and install nest tubes so that they can undertake this task in their own time.

Because the presence of dormice has been confirmed at Moat Farm, the nest tubes will only be checked in future in the presence of a fully licensed dormouse surveyor.

Fauna Observed

Butterflies

Small white
Gatekeeper
Comma
Ringlet
Meadow brown
Large white
Large skipper
Small skipper

Other insects

7 spot ladybird
Brown hawker
Banded demoiselle

Birds

Green woodpecker
Chiff chaff
Buzzard
Kestrel
Swallow
House martin

Reference

Rodwell, J.S. (ed.) (1992) British Plant Communities, Vol. 3: grassland and montane communities. Cambridge University Press. Cambridge

Plant Species Observed at Moat Farm Selected Fields and Disused Railway Line

- This species table does not represent the results of a systematic survey and vascular plant records for each area are very far from complete. The data is presented simply in order to illustrate the type of semi-natural vegetation and plant communities present in selected parts of the farm.
- Field numbers correspond to those shown on the Rural Land Register Map available from the landowner. The site map is not reproduced in this report.
- Time constraints made coverage of fields incomplete and species frequency was estimated for only 2 fields, which appeared to be those of greatest botanical interest in the floodplain area. In other areas species are simply recorded as “present” with no attempt made to estimate their abundance.

Plant abundance and status abbreviations

D = Dominant, A = Abundant, F = Frequent, O = Occasional, R = Rare, L = Locally, P = Present

AWI = Ancient Woodland Indicator Species (plants often associated with ancient woodland habitats in the South-east of England). Note that the presence of one or more AWI does not necessarily indicate that the habitat is ancient woodland

UGIS = Unimproved Grassland Indicator Species (plants often associated with unimproved grassland habitats with a long history of uninterrupted management)

Nomenclature is taken from the New Flora of the British Isles. 3rd Edition. C. A. Stace (2010). Cambridge University Press

Latin Name	Common Name	Field 5293	Field 5011	Railway line	Field 9299	Field 0209	Field 4499	Field 1585	Field 8387	Comments and Status
<i>Acer campestre</i>	Field maple			P						AWI
<i>Acer pseudoplatanus</i>	Sycamore			P						
<i>Achillea millefolium</i>	Yarrow	FLA	F		P		P	P	P	
<i>Agrostis stolonifera</i>	Creeping bent-grass	A	FLA		P	P		P	P	

Latin Name	Common Name	Field 5293	Field 5011	Railway line	Field 9299	Field 0209	Field 4499	Field 1585	Field 8387	Comments and Status
<i>Allium triquetrum</i>	Three-cornered garlic						P			Non-native plant of garden origin and potentially invasive
<i>Allium vineale</i>	Wild onion						P			
<i>Alopecurus geniculatus</i>	Marsh foxtail							P	P	
<i>Alopecurus pratensis</i>	Meadow foxtail	F	F		P			P	P	
<i>Anthriscus sylvestris</i>	Cow parsley			P						
<i>Anthoxanthum odoratum</i>	Sweet vernal grass	F	F		P	P	P			
<i>Arctium minus</i>	Lesser burdock						P			
<i>Arrhenatherum elatius</i>	False oat-grass	OLF	O							
<i>Bromus hordeaceus</i>	Soft brome								P	
<i>Carex pendula</i>	Pendulous sedge			P						AWI
<i>Carex remota</i>	Remote sedge			P						
<i>Carpinus betulus</i>	Hornbeam			P						AWI
<i>Centaurea nigra</i>	Common knapweed	ALD	FLA		P	P	P			
<i>Cerastium fontanum</i>	Common mouse-ear chickweed	O								
<i>Cirsium arvense</i>	Creeping thistle	OLA	FLA					P	P	Can be a problem weed
<i>Crataegus monogyna</i>	Hawthorn			P						
<i>Crepis capillaris</i>	Smooth hawk's-beard	O								
<i>Cynosurus cristatus</i>	Crested dog's-tail		F		P	P			P	
<i>Dactylis glomerata</i>	Cock's-foot	FLA	O			P	P	P		

Latin Name	Common Name	Field 5293	Field 5011	Railway line	Field 9299	Field 0209	Field 4499	Field 1585	Field 8387	Comments and Status
<i>Deschampsia cespitosa</i>	Tufted hair-grass		R	P						
<i>Dryopteris filix-mas</i>	Male fern			P						
<i>Elytrigia repens</i>	Common couch	LF	F			P	P			Can be a problem weed
<i>Euonymus europaeus</i>	Spindle			P						
<i>Festuca rubra</i>	Red fescue	F	O					P	P	
<i>Filipendula ulmaria</i>	Meadowsweet	O	OLF	P			P			
<i>Fraxinus excelsior</i>	Ash			P						
<i>Galium album</i>	Hedge bedstraw	OLF	O							
<i>Galium aparine</i>	Common cleavers			P						
<i>Geum urbanum</i>	Wood avens			P						
<i>Glechoma hederacea</i>	Ground-ivy			P						
<i>Hedera helix</i>	Ivy			P						
<i>Heracleum sphondylium</i>	Hogweed	F	O		P					Can be a problem in grassland swards
<i>Holcus lanatus</i>	Yorkshire fog	F	F		P	P	P		P	
<i>Hordeum secalinum</i>	Meadow barley	F	A		P	P		P		UGIS
<i>Humulus lupulus</i>	Wild hop			P						
<i>Hypericum imperforatum</i>	Imperforate St John's-wort	O	O							
<i>Hypericum perforatum</i>	Perforate St John's-wort	O								
<i>Hypochaeris radicata</i>	Common cat's ear	OLF	O		P					
<i>Ilex aquifolium</i>	Holly			P						AWI
<i>Iris pseudacorus</i>	Yellow flag			P						

Latin Name	Common Name	Field 5293	Field 5011	Railway line	Field 9299	Field 0209	Field 4499	Field 1585	Field 8387	Comments and Status
<i>Lapsana communis</i>	Nipplewort			P						
<i>Lathyrus pratensis</i>	Meadow vetchling	FLA	F		P	P		P		
<i>Leontodon hispidus</i>	Rough hawkbit								P	
<i>Leontodon saxatilis</i>	Lesser hawkbit		R						P	
<i>Leucanthemum vulgare</i>	Ox-eye daisy		O							
<i>Lolium perenne</i>	Perennial rye-grass	O	F		P	P	P	P	P	
<i>Lotus corniculatus</i>	Common birds-foot-trefoil	O	F				P	P	P	Larval foodplant of common blue butterfly
<i>Lotus pedunculatus</i>	Greater birds-foot-trefoil	O	OLF				P			
<i>Malus pumila</i>	Apple			P						
<i>Mentha aquatica</i>	Water mint						P			
<i>Oenanthe crocata</i>	Hemlock water-dropwort			P						
<i>Persicaria maculosa</i>	Redshank						P			
<i>Phalaris arundinacea</i>	Reed canary-grass			P						
<i>Phleum pratense</i>	Timothy	O	O			P	P			
<i>Plantago lanceolata</i>	Ribwort plantain	A	OLF			P	P		P	
<i>Plantago major</i>	Greater plantain						P			
<i>Poa pratensis</i>	Smooth meadow-grass					P				
<i>Poa trivialis</i>	Rough meadow-grass	O	O				P		P	
<i>Populus canadensis</i> x	Hybrid black poplar			P						
<i>Populus tremula</i>	Aspen			P						AWI

Latin Name	Common Name	Field 5293	Field 5011	Railway line	Field 9299	Field 0209	Field 4499	Field 1585	Field 8387	Comments and Status
<i>Potentilla reptans</i>	Creeping cinquefoil		O				P			
<i>Potentilla mixta</i> x	Hybrid cinquefoil								P	
<i>Prunella vulgaris</i>	Selfheal				P		P	P		
<i>Prunus spinosa</i>	Blackthorn			P						
<i>Pulicaria dysenterica</i>	Fleabane						P			
<i>Quercus robur</i>	Pedunculate oak			P						
<i>Ranunculus acris</i>	Meadow buttercup	F	F		P	P	P	P		
<i>Ranunculus repens</i>	Creeping buttercup	A	OLF		P	P	P	P	P	
<i>Rosa arvensis</i>	Field rose			P						AWI
<i>Rosa canina</i>	Dog rose			P						
<i>Rubus fruticosus agg.</i>	Bramble			P						
<i>Rumex acetosa</i>	Common sorrel	F	F		P		P			
<i>Rumex crispus</i>	Curled dock		O			P	P			
<i>Rumex obtusifolius</i>	Broad-leaved dock		O							
<i>Rumex sanguineus</i>	Wood dock			P						
<i>Salix caprea</i>	Goat willow			P						
<i>Salix cinerea</i>	Grey willow			P						
<i>Salix fragilis</i>	Crack willow			P						
<i>Sambucus nigra</i>	Elder			P						
<i>Schedonorus arundinacea</i>	Tall fescue		R							
<i>Scrophularia nodosa</i>	Common figwort		R							
<i>Senecio jacobaea</i>	Common ragwort						P			Can be a problem weed
<i>Stachys sylvatica</i>	Hedge woundwort			P						

Latin Name	Common Name	Field 5293	Field 5011	Railway line	Field 9299	Field 0209	Field 4499	Field 1585	Field 8387	Comments and Status
<i>Stellaria graminea</i>	Lesser stitchwort	O								
<i>Tamus communis</i>	Black bryony			P						AWI
<i>Taraxacum agg.</i>	Dandelion		O							
<i>Tanacetum vulgare</i>	Tansy		LF							
<i>Tragopogon pratensis</i>	Goats-beard	O	OLF							
<i>Trifolium pratense</i>	Red clover	A	F		P	P	P	P	P	Important food source for bumblebees
<i>Trifolium repens</i>	White clover	F	A		P	P	P			
<i>Urtica dioica</i>	Common nettle			P						
<i>Valeriana officinalis</i>	Common valerian			P						
<i>Veronica chamaedrys</i>	Germander speedwell			P						
<i>Vicia cracca</i>	Tufted vetch	O	O			P				