Autumn Budget 2017 – a submission by the BPF

Introduction

1. The BPF represents investors in UK real estate – an industry which supports more than 1 million jobs and contributed more than £65bn to the economy in 2016, equivalent to 4% of the UK's GVA. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them.

2. The real estate industry provides the infrastructure and places in which people can live, do business and relax. Indeed, it is very hard to imagine how the modern economy would work if there wasn't anyone to provide it with appropriate physical space. As a creator of that space, the real estate industry is uniquely placed to shape the UK's future and to support long-term economic growth and increased productivity across the UK.

3. The purchase, development, ownership and management of commercial real estate involves significant economic activity. The government can leverage this economic activity – as well as the real estate industry's ability to support other sectors of the economy – to help deliver on its key objectives of maintaining jobs and growth, developing essential infrastructure and housing the nation.

Supporting investment through Brexit

4. Almost six months have now passed since the UK officially begun the process of leaving the EU and during that time the government has begun to outline its preferences for the shape of a future relationship with the EU. Government departments have also begun to consider what impact Brexit will have on the UK's legal and regulatory framework; a truly mammoth task that will no doubt continue for the foreseeable future.

5. We appreciate that Brexit related work currently takes up an appreciable proportion of the government's resources and rightly so; working out a healthy and productive relationship with the EU is critical to minimise disruption to economic activity.

6. However, as negotiations with the EU take place, there is plenty that the government can do on the home front to buttress the foundations of the UK's economic success, and to continue to attract the overseas and domestic capital into UK real estate, to the benefit of the whole economy As we set out in our Brexit manifesto earlier in the year, we urge the government to – within its broad negotiating strategy – pursue objectives that will support real estate investment by:

    1. Working in partnership with the real estate industry to maintain business confidence and drive economic growth.

    2. Providing a stable and competitive UK tax, regulatory and planning system.

    3. Encouraging, funding and enabling infrastructure investment to unlock land and productivity improvements.

    4. Working with our industry to ensure access to the skills we need for construction and development.

5. Supporting an increase in housing supply across all tenures.

7. The real estate industry has a key role to play in delivering a positive future for the UK and is keen to work with the government to make this happen. There are measures the government should consider now to further the objectives highlighted above, including:

   - More frequent business rates revaluations and a broader look at real estate tax
   - Tax simplification: VAT, Energy Tax and the Construction Industry Scheme
   - SDLT relief to support affordable rented housing
   - Support investment in primary care facilities
   - Targeted changes to corporate interest and loss restrictions and PAIF seeding relief

8. We set these out in more detail below.

Business rates

9. We strongly welcome the government's engagement with the business community on business rates over the past couple of years. The commitments made at the 2016 Budget to move from RPI to CPI as the basis for escalating the multiplier and to introduce more frequent revaluations will over the long run make business rates a fairer and more sustainable tax. While we would like these changes to happen sooner than the government has indicated, we are heartened by the Chancellor's recent correspondence with business groups, which confirms that these commitments remain in place despite the political events of the last 18 months.

10. We also support the Chancellor's suggestion that *"we need to look more broadly at the way in which we address the perceived unfairness that companies that operate in bricks and mortar are effectively treated differently from companies that do not"*. Indeed, we would go further than this and recommend that the government takes a more holistic approach to taxing real estate.

11. Throughout its lifecycle, from planning and development, to rental, to refurbishment and finally demolition; a property – and those involved in its ownership and maintenance – is subject to a panoply of different taxes, fees and levies, making real estate tax incredibly complex. Complexity increases risk and this deters investment, ultimately to the detriment of our towns and cities.

12. The taxes paid or borne by the real estate industry have different objectives and have developed independently over time – usually to become ever more complicated. As a medium-term project, we feel there is much merit in the government working with the industry to explore whether a different system of real estate tax could result in the industry making its fair contribution to the Exchequer in a more economically efficient way.

Tax simplification

13. Complexity in tax and regulation not only impacts on productivity, it also has a negative impact on investor and business sentiment. A strong focus on simplification will not only help grow business confidence in a revenue neutral way, it is also a necessary precursor to fully digitalising the tax system. We outline some opportunities for simplification in VAT, energy tax, and the Construction Industry Scheme.

VAT

14. Applying VAT in a real estate context can be particularly complicated. A range of different rates and exemptions can apply depending on the facts and circumstances of individual situations and the precise treatment of a transaction or project is often open to interpretation. Real estate investment, and the jobs and economic growth that it brings, thrives on certainty. It is discouraged by complex and unclear VAT rules and interpretation, which is why we welcome the OTS's recent review on how to modernise and simplify VAT.

15. Our response to the OTS highlights several ways in which the VAT treatment of real estate investment and development could be simplified. Some of our proposals are quick, easy wins, such as ensuring HMRC guidance is up to date (or at least clear about where it is outdated or under review), streamlining the option to tax (OTT) notification process and creating sector specific and 'HMRC approved' partial exemption special methods. Others are for the medium or longer term, such as introducing a (potentially taxpayer funded) ruling system, modernising the OTT disapplication and revocation rules and introducing a new optional reverse charge for sales of property assets to avoid the complexity of TOGC.

16. In addition, the government could support the construction of new homes to rent through changes to VAT:

    - In order to fully recover VAT on construction costs, developers of build-to-rent (BTR) homes currently need to enter into commercially unnecessary arrangements, such as the grant of a long lease straight after construction. Allowing the supply of residential rents to be zero rated would eliminate the need for such arrangements, significantly simplifying the VAT treatment of build to rent developments, and in turn helping to make funding new rental homes more appealing to investors.

    - Introducing zero rating on residential rents would also allow VAT costs incurred on repairs and maintenance work to rental properties to be recoverable, which would go a long way improving the quality of our nation's housing stock – and would go some way to equalising the VAT treatment of commercial and residential real estate investments. While such a change would be particularly helpful in the near-term for those making urgent repairs to cladding in light of Grenfell, we appreciate that such a measure would probably need to wait until after the UK has left the EU. Therefore, government may want to consider some short-term relief for those incurring irrecoverable VAT on the replacement of cladding. It would feel inequitable to have to pay VAT twice on a supply that property owners in good faith thought was suitable. It may particularly help resident-owned blocks, where a lack of reserves may mean the cost of recladding has to be found from current expenditure.

    - The 'separate use and disposal' element of the VAT definition of a 'dwelling' is now almost 20 years old and should be reviewed, as it is making 'covenanted' BTR arrangements (where local authorities enter covenants with BTR developers regarding keeping those homes within the rental sector) needlessly difficult. With the country facing an acute housing shortage, the last thing it needs are tax rules that mean fewer homes get built.

Construction industry Scheme

17. The Construction Industry Scheme (CIS) creates a huge administrative burden for real estate groups. Simplification of the registration process would be helpful, as would a better understanding within HMRC of how to deal with the different types of entities commonly encountered in real estate groups, such as partnerships. There is also scope for more radical simplification by moving away from entity by entity compliance to a group level compliance process.

Energy Tax

18. We would welcome clarification from government on the next steps for energy tax, which has been under review since last autumn. There are opportunities for simplification in this area, through incorporating corporate energy tax into the existing Climate Change Levy (CCL).

Affordable rented housing

19. We strongly support the government's proposals – set out in the recent Housing White Paper – to support increased delivery from the BTR sector by giving greater clarity and certainty on the planning status of BTR. In particular, we welcome the introduction of Affordable Private Rent (APR) and the insertion of BTR and APR within the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG).

20. However, we are concerned that tax policy is not working to support and promote the building of APR homes. At the time it was first mooted, it was suggested that the 3% SDLT surcharge for owners of multiple property would not apply to large-scale investors that were building new BTR homes. Sadly, the final rules did not include such an exclusion, with the result that investor sentiment took a hit and certain investments became more marginal or unviable.

21. While we understand that the government may find it politically difficult to introduce an exemption along the lines of what was originally contemplated, there are in our view strong reasons for excluding from the 3% surcharge that proportion of a BTR scheme that is designated as APR. Such an exemption would reduce the cost of providing APR, rendering greater provision of APR more economical.

Primary care facilities

22. We encourage the government to commit to and deliver on the recommendations in the Naylor Review of NHS property and estates. There is currently over £3bn of private capital ready and willing to be invested in much-needed primary care estates across the country. Reviewing the GP rent reimbursement scheme and publicly encouraging this investment would save the NHS hundreds of millions of pounds a year by easing pressures on A&E services and providing value for money in high-quality primary care premises.

Corporate interest and loss restrictions and SDLT seeding relief for PAIFs

Corporate interest/loss restrictions

23. The new corporate interest and loss restriction rules are due to apply from 1st April 2017 and yet the relevant legislation is still, almost six months after that date, to start its journey through Parliament. We understand that it was never the intention for the rules to be so long in the making and we commend the engagement that officials at HMRC and HM Treasury have had with stakeholders throughout the development of the new rules.

24. However, the fact remains that these are extremely long and complex pieces of tax law (308 pages of legislation and 617 pages of guidance at the latest count) and it is in our view unfair and unreasonable to expect businesses to comply with them before the rules have even been scrutinised by Parliament. Many businesses will view this as retrospective taxation and such an approach to tax policymaking ultimately harms the UK's reputation as a place to invest in and do business from.

25. We have long suggested that an implementation date of 1st April 2017 was overly ambitious for both businesses and the government and we continue to recommend that the effective date for the new corporate interest and loss restriction rules be delayed to 1st April 2018.

26. Furthermore, we recommend that time and resource are made available after implementation to allow business the opportunity to feed back on the practical application of these complex rules. While significant progress has been made in relation to the treatment of interest for property companies, we remain concerned that third party interest will be restricted in some cases, and a broader exemption for lending against real estate may be necessary. It would be incredibly detrimental to restrict genuine third-party debt to UK real estate; hence a post implementation review will be essential to identify and address any adverse consequences.

SDLT seeding relief

27. We welcomed the introduction of this relief in 2016 and believe it will facilitate the creation of new funds to invest in UK real estate, attracting money from all over the world to invest in our towns and cities. To make the relief even more effective, the government should review the "clawback mechanism" that can apply under certain circumstances in the three years after the relief is claimed and which in our view is unduly restrictive.

28. We also recommend that this relief be extended to REITs to give investors with existing portfolios (particularly for funds investing life insurance and defined benefit money) greater flexibility regarding how they structure their investments. The wider the range of accessible available investment structures, the more likely it is that UK real estate investment funds are created.