

TAXREP 8/06

PLANNING-GAIN SUPPLEMENT

Memorandum submitted in March 2006 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in December 2005 by HM Treasury, HM Revenue & Customs and the Office of Deputy Prime Minister

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INTRODUCTION

1. We are pleased to respond to the invitation to comment on the proposal to introduce a new tax on land development under the name of 'planning-gain supplement.' The consultation document can be found at:
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_024845
2. We welcome the intention to make the planning-gain supplement (PGS) as simple as possible. We particularly welcome the proposal that it should be charged on a single event (the grant of planning permission), on a single person (the one who carries out the development) and on a fixed occasion (the start of development). However simplicity often lies uneasily with fairness and a judgement often needs to be made between which of the two should prevail. In the following comments we have sought to avoid as far as possible undermining the simple approach but to highlight those instances where we believe that fairness warrants a departure from that concept.
3. We are concerned that dealing with current use value (CUV) and planning value (open market value at the time planning consent is given) and the problems caused by valuations may undermine the objective of simplicity and makes it more difficult to design a fair system. The possibility of penalties based on differences in valuations in a self assessment system could give rise to unfairness.
4. Details about the Tax Faculty and the Institute of Chartered Accountants in England and Wales are set out in Annex A.

KEY POINT SUMMARY

5. Our key concerns are:
 - This is the fifth attempt by a government to tax part of the uplift in land values arising from obtaining planning permission for development. Experience suggests that it is not effective to use a tax to claw back some of that gain to benefit the local community that granted the planning consent. Despite its flaws the Section 106 system will continue to work better than the proposed tax. (See paragraphs 56 to 59.)
 - Even if all of the new tax collected (net of collection costs) is given to local communities there may be limited additional benefits to them bearing in mind the expected reduction in Section 106 gains and the need to set the tax rate low in order not to discourage development. (See paragraphs 56 to 59.)
 - We note that under the existing tax system planning gains realised by landowners and developers are already subject to tax.
 - We think the design of the tax is flawed although it is a lot simpler than previous taxes on development gains. Attached in Annex B are our Ten Tenets for a Better Tax System which we use as a benchmark for taxes. It appears to us to breach

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Tenets 2, 3, 4, and 9. These points can be addressed although problems with valuations may be difficult to resolve.

- We do not think the tax should be charged on gains that have accrued before the new tax is introduced. Accordingly, where land is owned at the time the new tax is introduced the open market value at that time and not current use value should be the base on which the gain is calculated. (See paragraph 14.)
- Opinions on the current use values of land do not provide the certainty that a good tax requires. In contrast to open market values, current use values are more difficult to assess. Currently they are not often required and valuers are not used to providing them.
- We do not think the tax will work as a self-assessed tax because it is a system based on values. It is almost inevitable that HM Revenue & Customs (HMRC) will wish to be involved in verifying those values in all but the smallest development. (See paragraphs 27 to 29.)
- Once the tax is introduced we think it may discourage development and the release of land for development. It may be a question of degree. At one end of the scale there will be little disincentive if the tax rate is set very low but if the rate is high development may cease altogether. (See paragraph 6.)

GENERAL COMMENTS

6. We believe that the reason why past attempts to tax planning gains have failed is that the rates have been such as to discourage development completely. We accordingly welcome the proposal that the tax should not be so high as to discourage development. The level of tax is obviously a policy decision for Government. It is, however, clear that a 4% rate of SDLT has been felt by many landowners to be sufficiently burdensome that it is worthwhile to enter into schemes designed to seek to avoid the tax. SDLT is charged on gross values, not on an increase in value, but the SDLT experience suggests that a rate of PGS that is more than, say, 10% to 15% might well discourage development.
7. Our reading of Para 4 of the Barker report is that Kate Barker was suggesting a tax on land for residential development (see for example paragraphs 4.45, 4.48 and 4.66). Whilst we can see the logic in extending the charge to all development land, we believe that the government ought to make the economic case for doing this as it does not seem to be something that was considered by Kate Barker. We think this particularly pertinent in the context that Para 4.23 of the report states that “the taxation of land to bring forward additional residential land supply would yield limited results and may, in fact, only succeed at the cost of introducing elements of inequity. However, the price mechanism could be used in other ways to affect land use behaviour.” It does not seem to us that a tax on all development land rather than one limited to residential development land is likely to affect land use behaviour in the same manner as Kate Barker envisaged.
8. We note from paragraph 4.10 of the consultation document that it is felt that land values are likely to fall so that the landowner rather than the developer effectively bears the tax. This is obviously a matter of judgement but clearly the more land values fall the less the incentive to owners of land to release it for development.

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ANSWERS TO QUESTIONS IN THE CONSULTATION DOCUMENT

Q2.1 Planning value and current use value (CUV)

Bringing cost into the calculation

9. Whilst superficially attractive, the use of CUV as the sole base from which to calculate planning gain seems to us inherently unfair. Land and property rarely changes hands at current use value. Buildings have a finite life and at the end of that life the use may be very different. For example in some areas large houses with gardens that were built between the wars are currently being demolished to make way for blocks of flats.
10. Accordingly many prices contain an element of “hope value”, reflecting the hope that at some stage planning permission will be obtained for a change of use. The amount of hope value obviously varies from property to property as it will reflect the degree of likelihood of planning permission for a change of use being granted, the likelihood of the purchaser wishing to change the use in the foreseeable future and what different use might be permissible.
11. Where it seems likely that a change of use would be granted should an application be submitted, the element of hope value can be very high. In these circumstances we think it unreasonable for a purchaser who has paid for hope value to be charged PGS on that value.
12. In principle we think that a person ought to be able to use his actual cost, ideally adjusted for inflation, as an alternative to current use value in calculating the gain. It is clearly particularly unfair not to allow such an approach where a person acquired the land prior to the introduction of PGS. We think that conceptually such an alternative would also be the fairest system going forward. However we accept that a way would then need to be found to tax the vendor of the “hope value”.
13. This would clearly complicate the tax, and it may be that a balance needs to be found between simplicity and fairness. We suspect that over a period the market price of land will fall so as to reflect the potential planning-gain supplement that will be payable in due course by the purchaser. Accordingly the issue of fairness may be a transitional problem only. A possible way to deal with this would be to allow a purchaser to elect to use the cost of the land as his base instead of its current use value at the time development commences, but only where the land was acquired before the commencement day for PGS. This would avoid taxing increases in value that a purchaser had effectively paid for in ignorance of the introduction of PGS, and would avoid complicating the tax in the longer term.
14. Further, unless special arrangements are made the new tax will be charged on planning gains and hope value before the introduction of the tax. We think that would be wrong because it would amount to a retrospective tax. Accordingly where the land was acquired before the introduction of the tax we think the tax base should be the market value of the land at the time PGS was introduced.

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Deduction for CUV

15. We are not in favour of the alternative basis suggested at 2.9 of charging PGS on the value of the site with planning permission with no deduction for current use value. While this would have the advantage of simplicity, it would suffer the defects mentioned in paragraph 2.9 of the consultation paper. It would also charge PGS on a simple reconstruction where there is no change of use. It would accordingly not achieve the objective of taxing only planning gains. It also comes close to being a turnover tax, which would of course breach EC law.

Meaning of full planning permission

16. We are unclear what is meant by full planning permission, despite the explanation given in footnote 2 on page 11 of the consultation paper. Most planning permissions contain “reserved matters”, the planning permission being conditional on their being met. Such matters are normally detailed matters that must be conformed with during the course of the development. We assume that such permission is regarded as a full permission at the time it is granted, not when the conditions are complied with.

Changes of plan

17. It is not unknown for a planning permission to change after the commencement of development. For example a housing site might have planning permission for 40 houses and that might subsequently be changed to 45 (or even to 35). How is it intended that such changes should be dealt with? For instance, would it be regarded as giving rise to a new development for the extra 5, or would it supersede the original development for PGS purposes, which could more easily take into account a reduction to 35?

Taking value of buildings into account

18. It is unclear whether the current use value is envisaged as the value of the land with any existing buildings on it or the value of the cleared site. At the time of the grant of full planning permission the building would normally exist, but paragraph 2.7 refers to “the site”. Since the basic building may be retained, e.g. on a conversion from commercial to residential, we assume that the value of any buildings is to be taken into account but with a deduction for the cost of clearing the site where this would be required.
19. Also we would like to know what the position is where there is a composite site. Will each parcel be treated separately or will the calculation be done in aggregate. Loss of a building on one site to create amenity for houses constructed elsewhere on the same site could result in high planning gain with no effective offset.

Valuation assumption of unencumbered freehold

20. We are concerned at the suggestion that valuations should be based on a freehold interest with vacant possession. In many cases a developer does not hold a freehold. It used to be generally accepted that the average life of a modern commercial building was no more than 60 years and that a major refurbishment would be required after 30.

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These periods seem to us to be reducing; the modern life of a building is often shorter. Accordingly some developments could well be attractive even if the developer only has, say, a 60-year lease. The value of a 60-year lease with planning permission for the development is however significantly different from a freehold with the same planning permission. It seems unfair either to tax the developer on value that he does not possess or to tax the holder of the freehold reversion on value that may well never accrue to him.

Change of use

21. The document does not make clear whether or not a mere change of use constitutes development as it did for both development land tax and development gains tax. Obtaining planning permission for a change of use can affect the value of land particularly if that change of use is combined with refurbishment or alterations on an existing building on the land. On the other hand, the increase brought about by a change of use will in most cases be insubstantial and if the tax is at a low rate the yield from treating a change of use as development may not make it worth complicating the tax by bringing in special rules to treat a change of use as development.

Farmers

22. To tax increases in value brought about by a change in use creates particular problems for farmers as many of them have to seek additional ways to generate income from their land in order to keep the farming business viable. For example should a change in use of farm cottages which are no longer needed in the farming business because mechanisation has reduced the need for labour into bed and breakfast lettings attract the tax? Similarly, should the conversion of a barn into holiday flats attract PGS?
23. The tax is likely to raise difficult valuation issues for farms. They may arise, for example, where a change of use involves going into new areas of untried and untested diversification. Unlike straightforward housing development there may be no comparable open market figures.
24. We understand that the government is committed to giving special consideration to the needs of rural communities. We would like to know whether these special needs have been taken into account. For example will the new tax discourage rural development and diversification which are needed to create employment and economic activity in rural areas?
25. This issue is even more acute where a farm building is created for specific use on the farm. For example, is it reasonable that the construction of a farm shop which is used primarily to sell produce from the farm should attract tax? Some farm developments are unlikely to add value. For example, the construction of a new dairy unit on a dairy farm is unlikely to add value to the farm but the cost of obtaining the valuations to demonstrate this would be a major expense to the farmer.

Q2. Ease of compliance

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Valuation tolerance

26. We doubt that a tax that is charged by reference to values can ever be easy to comply with as valuations are, by their nature, subjective. Furthermore our experience with other taxes is that HMRC invariably enquire into property valuations and even sales where there is not an arm's length purchaser. Accordingly simplicity would require the tax to take a broad brush approach and allow HMRC to challenge valuations only where the taxpayer's figure is significantly different from the District Valuer's view. In negligence cases the courts generally adopt a valuation tolerance of 15%.

Self assessment or HMRC assessment?

27. If a valuation tolerance is not built in we would strongly question whether PGS ought to be a self-assessed tax. This is likely to cause extra work for everyone if a gain has to be calculated, valuations then have to be agreed, and the tax has to be recalculated. Although paragraph 2.13 of the consultation paper refers to a risk-based assessment of returns, this is of course HMRC's current practice in relation to income and corporation tax returns and the risk-based assessment there seems to us to demonstrate that they regard virtually any valuation as constituting a risk.
28. It also needs to be borne in mind that neither CUV nor the value with planning permission are valuations that most developers would normally need. Also unlike open market valuations they are not the type of valuations that valuers are experienced in providing. Except in the case of a mere change of use, a developer is normally interested only in the cost of his land, his estimate of building costs and his estimate of what the completed development could be let or sold for. This would not necessarily apply in the case of a change of use or possibly where the developer has owned the land for many years. In such cases he may well obtain a professional valuation of the land to assess whether or not the development is viable.
29. The government accordingly needs to decide whether it wants, in effect, to require developers to incur extra costs in obtaining professional valuations or whether it will accept informal valuations. This is important in the context of "negligence". If the government takes the view that, where an informal valuation turns out to be significantly different from the value ultimately agreed, that difference should attract a penalty, or should extend the period during which HMRC are entitled to adjust the tax, that would effectively force most people to spend money on formal professional valuations (as the major benefit of self-assessment to taxpayers is the concept of finality).

Average or actual valuations

30. We believe that valuations need to be actual ones, as suggested at paragraph 2.13. Whilst average valuations might seem superficially attractive, we cannot see in practice how such averages can be arrived at, except on a very broad-brush basis. The property industry mantra that the three most important factors are location, location and location is a truism. Even two sites adjacent to one another can have very different values as one may be nearer to shops, a railway station or other facilities.

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31. We accept that it would be possible to assume that land in a defined postcode area is worth £X per acre for agricultural land, £Y for land with commercial use, £Z for land with residential use and £W for land with industrial use. The developer could then multiply the difference between the CUV and the relevant value as above by the area of his site to arrive at the planning gain. However the result would be extremely unlikely to reflect the planning gain on individual sites. It might reflect the overall value to the community of all of the planning permissions granted, but the allocation of that overall amount between individual developers would be capricious.
32. Furthermore, very many developments are of mixed use, either in current use or in the proposed new use, so a way would be needed to deal with such issues. Also, of course, the value of land with planning permission for town houses is very different from the value of the same land with planning permission for social housing, which is again very different from the value of the same land with planning permission for a block of flats, yet they are all residential development.

Treating purchase price as development value

33. Where land is purchased with planning permission after the date that PGS comes into effect it is likely that the purchase price will reflect the development value. It might therefore be sensible to provide that in such circumstances if development commences within say three years of the purchase, the price can be treated as representing the development value, so avoiding the need for a valuation to arrive at that figure unless the developer wishes to incur the cost of doing so.

Q2.3 Information

Sharing of information available to the District Valuer

34. If a valuation has to be carried out as at a date prior to the time a person acquired his land (e.g. he acquired it with planning permission in force) he ought to be provided with all of the information in respect of the land that the District Valuer (DV) holds. It would be unreasonable for the State to seek to exploit the fact that it holds information that is not available to the taxpayer.

Burden of proof on valuations

35. In addition there should be an onus on HMRC to disprove the taxpayer's valuation rather than for the taxpayer to disprove HMRC's claim, as happens currently in tax matters. That presumption on burden of proof is predicated on the basis that the taxpayer is more likely to have access to necessary information than HMRC and is therefore inappropriate to the position where the bulk of the available information is likely to be held by the State, not the taxpayer.

Timescale

36. There is also of course a question of timing. If a taxpayer will be regarded as negligent if he cannot substantiate his valuations, in fairness he needs to be provided with the information in time to instruct a valuer to prepare a valuation to enable him to complete the return.

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37. This raises obvious practical problems, both as valuations cannot be prepared overnight and as the Valuation Office Agency (VOA) cannot be expected to provide information overnight. The procedure that would be needed would therefore be along the lines of:
- i) the taxpayer informs the DV of the commencement of development and, where he has alternative planning consent, the consent under which he is developing,
 - ii) the DV provides the taxpayer within, say, 30 days with the information that he has in relation to the land at the valuation date,
 - iii) the taxpayer then has, say, 3 months to obtain professional valuations and submit a PGS return and
 - iv) HMRC then have 9 months (which is the SDLT enquiry period) to enquire into the return.

DV to value and assess

38. It would obviously be far simpler for the taxpayer to notify the DV of commencement of development, for the DV to then carry out his own valuation and send an assessment to the taxpayer showing his two valuations and for the taxpayer to decide whether to appeal against that assessment – preferably to the DV so that he can seek whatever further information he needs at the same time, but possibly to HMRC – and for HMRC to collect the tax due once the valuations had been agreed (or within 30 days of the assessment if there is no appeal).

Q3.1 When should payment occur?

39. We agree that the tax should become payable at the commencement of development, or soon after (see above).

Nominal starts of development

40. There may be a problem with nominal starts. Currently it is not unusual for a developer to start a development to keep a planning permission alive, while he is still sorting out the finance or the solutions to reserved matters. We do not believe that such a nominal start to the development should trigger payment of the tax charge. Perhaps work that takes under 14 days and is not a substantial part of the development should not trigger the tax provided that further development work does not take place within the following 14 days. The subsequent continuation of the development would then trigger the tax charge.

Development start notices

41. The proposals in paragraph 3.7 onwards for a Development Start Notice are not clear to us. We cannot see much point in requiring such a notice as well as a PGS return simply for the purpose of the tax. If the Development Start Notice is intended to enable someone to confirm that the development is taking place, then it needs to be given to someone physically based in the area who is able to do this. Accordingly we think that the notice ought to be given to either the DV or the Building Control Officer. If the notice is given to HMRC then HMRC will need to ensure that someone

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in the local area is aware of it. We can see no point in inserting such an extra step. Our understanding is that notification of development already has to be given to the local authority Building Control Officer. If that is correct we cannot see any logic in requiring a Development Start Notice to be given in addition to the existing notice. We state at 23 that we believe that it is far more appropriate for the tax to be dealt with in the initial stages by the VOA rather than HMRC. Giving notice to the DV would tie in well with that suggestion.

Q.3.3 Phased development

Treatment as separate developments

42. We think that a developer who is carrying out a phased development should be able to give a Development Start Notice for each phase as if it constituted a separate development. All that this would require is for the developer to specify what the phase covers, and probably to state when he gave notice of any earlier phase to enable HMRC to keep track of the progress of implementation of the overall planning consent.

Development stop notices

43. Although you have not specifically asked for responses on the issues raised in paragraphs 3.12 – 3.17 we think that they raise a number of problems. In particular the proposed Development Stop Notice seems to us to be a draconian measure. Whilst it may be appropriate where a developer deliberately flouts his obligation to give a Development Start Notice (or equivalent), we can envisage circumstances where the failure is not deliberate. For example a DIY housebuilder or a non-UK resident developer may be unaware of the law. It is likely to be very unclear to what extent a refurbishment or a minor development constitutes a trigger event. It can be very expensive to stop work during the course of a development. It may also cause a delay to the development, as once contractors go off site it may take some time before they can resume work. This leaves the development as an eyesore, which hardly seems in the interest of the local community. We do accept that there needs to be some sanction to ensure that the PGS is paid. The most logical and sensible alternative would be to give HMRC a charge on the property for unpaid PGS. This would allow the development to be completed, which is environmentally desirable, but would effectively prevent the completed development from being disposed of without paying the tax and would give HMRC an ability to enforce payment of the tax where a building is being developed for the land-owner's use.
44. The Development Stop Notice also of course requires the local authority to be aware that development is taking place. We are not clear how it is intended they should do this. It would be expensive to have staff patrolling the streets. There seems to be a significant risk of unfairness if a severe penalty is imposed only on those who the local authority happen to notice are carrying out a development. This seems to us an instance in which the quest for simplicity will inevitably create unfairness.

Transitional arrangements

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45. Similarly although you have not asked for comments on paragraphs 3.18-3.20 we would mention that we believe that transitional arrangements are essential. As such, we welcome the suggestion that planning permission granted before the appointed day will not attract the charge. In our view this ought to apply to outline permissions as well as final ones. A developer who needs to assemble a site will normally aim to do so before seeking outline consent and it would be wrong for a person who has put together a site prior to the introduction of PGS to have to suffer PGS that he was not able to plan for in his feasibility study.
46. Indeed we feel that transitional arrangements ought to apply where no planning consent exists on the appointed day if a developer can show that he was assembling a development site for a development of a type permitted under the local development plan and planning permission is applied for within a reasonable time after the appointed day.

Q4.1 Brownfield land

Lower rate?

47. Whether a lower rate should apply to residential development on a brownfield site seems to us to be a political decision. It is questionable whether some brownfield sites are suitable for residential development because of pollution and contamination. There is a risk that a lower rate might result in residential development occurring on sites that should in reality only be used for commercial development.

Problems of definition

48. There may also be a problem of definition. A field forming part of a farm is clearly a greenfield site. But what if it has a barn on it? Would that make it brownfield? A house with a large garden is presumably a brownfield site if the house is demolished and replaced by a new one. But what if a second house is built at the bottom of the garden? Is the bottom of the garden greenfield or brownfield? And if it is brownfield what if the house sits in five acres of land? Most of that land ought logically to be greenfield.

Q4.2 Small scale development

49. We do not believe that a construction of an extension to a house or a “granny flat” should attract the charge. Indeed we think it would be sensible to exempt any development of a single house by a do-it-yourself housebuilder or by a houseowner who has owned a house for a minimum period and constructs a second house in the garden for occupation by a relative. If the PGS is at a modest rate the tax involved is likely to be negligible, and private individuals ought not to have to grapple with the tax when making changes to their own homes.
50. For the same reason it might also be reasonable to exempt even the construction of such a second house for sale, perhaps limited to cases where the total land of two houses is less than half a hectare (on which the disposal of the land would not attract capital gains tax).

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51. We would also question whether improvements or extensions to commercial property should attract PGS where the work is carried out by the occupier of the property for the purpose of his own business. Not only should such enhancements not to be discouraged, as acknowledged in Para. 4.7, of the Consultation paper, but the tax involved is unlikely to justify the costs of calculating it.

Minimum threshold

52. As mentioned in paragraphs 23 to 26 we also think that minor developments by farmers to create additional income in order to make the farm viable ought to be exempt.
53. We would also welcome an overriding minimum threshold. If formal valuations are required the cost of doing these, agreeing them with HMRC and agreeing the tax is likely to be a minimum of £3,000-£5,000. Accordingly we think the threshold should be fixed at a level which exempts, say, the first £10,000 of tax that would have been due in the absence of a threshold.
54. We doubt that a threshold will in reality give rise to significant avoidance. The only situation in which we can envisage this is if a development is broken into very small phases. It would be simple to provide that where a development covered by a single planning consent is phased the threshold applies by reference to the entire development, not to each phase.

Treatment for tax purposes

55. Although you have not asked for comments on paragraphs 4.10-4.13, we believe that the PGS ought to be regarded as part of the cost of the development for income tax, corporation tax and capital gains tax purposes. That is how irrecoverable VAT is treated. We note that it is not intended to grant any specific relief for inheritance tax, VAT or SDLT. In most cases this is reasonable. However if the tax is charged on the developer by reference to a time when he did not own the land there are two possible ways that the tax may be passed on to the vendor of the land. It could simply be reflected in a reduced price for the land or the vendor could be required to meet the tax when it falls due. If the latter route is adopted the tax ought to rank as a debt for IHT purposes if the vendor dies before the tax becomes payable. It also ought to qualify as a deduction from the sale price in calculating the VAT and SDLT on the sale.

Q5.1 Reducing the scope of planning obligations

Benefits of section 106 agreements

56. This seems to us to be a policy decision. However, there will usually be a limit to the amount that a developer is prepared to pay to the community to allow the development to proceed. He will not carry out the development unless his projected reward for a successful development is commensurate with his risk. Our experience is that in recent years most local authorities have become adept at negotiating section 106 agreements so as to obtain benefits for the community that the local authority feels desirable but does not itself have the resources to provide at the current time.

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57. Furthermore the value of the community benefit that a local authority obtains through a section 106 agreement is often significantly greater than the benefit that the local authority can obtain from expenditure of an amount equal to the cost to the developer of providing the benefit. It is clearly cheaper for the developer to use labour and materials already on the site to carry out community benefit work on the site itself than for the local authority to carry out the same work as a separate project after the development work has been completed. Such work can also be carried out far more easily and accordingly more cheaply, during the development phase because the site is dirty and incomplete so there is no requirement to keep dirt down while carrying out the local authority work, or to clean up afterwards.
58. Accordingly, whilst we agree that the PGS can give transparency and can be an effective way of reducing the scope of planning obligations, we think that it is likely to achieve those objectives at a significant cost to the community by way of a reduction in overall planning gain.
59. We think this a particular issue in relation to residential property. Currently a section 106 agreement with a housebuilder often requires a percentage of social housing to be created on the site and given to a housing association. The PGS is likely to mean that in future social housing will have to be built on a separate site at a significantly increased cost. Not only does this not seem in the overall interest of the community, but it is also likely to undermine the government policy of seeking to integrate social housing with the general housing stock.

Who should get the PGS?

60. We are also unclear what the Barker recommendation (Box 5.1) means in suggesting that local authorities should receive “a direct share” of the PGS. We would have thought that the local authority should receive the entire PGS on developments in its area, after deducting only the HMRC and VOA costs of administering the tax.

Milton Keynes experience

61. We are sceptical to what extent the Milton Keynes experience can be extended nationwide. This seems to be very dependent on temporary financing from English Partnerships. We are surprised if English Partnerships are able to make such funding available nationwide.
62. There is also an issue as to what a local authority should expect to obtain from planning agreements. These are ideally suited to strategic infrastructure the need for which is generated or increased by the development. Except in major housing developments, planning agreements are unlikely to provide a local authority with schools or other major requirements remote from the development. If the intention is that a local authority should use PGS money for such purposes the effect is likely to be a significant reduction in the creation of strategic infrastructure, as developers will cease to provide this (or provide only a reduced amount), and if the money that would otherwise have been used for this purpose is diverted to build schools this seems likely to put enormous strains on the existing infrastructure.

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63. The case for scaling back planning obligations seems to us to be a wholly political one. We believe that the cited problems of the existing system are somewhat exaggerated and that, by and large, it works in practice. We doubt that the distinction drawn in Para. 5.11 between “voluntary” and “policy-led” agreements is a valid one. Developers do not volunteer to donate land or works to a local authority. The real distinction is probably between those works negotiated by the local authority which are related to, or generated by, the development and those which are remote from the development. But that distinction seems to us irrelevant provided that the planning agreement gains are gains that the local authority believes it needs.
64. For the same reason we would question the assumption in Para. 5.13 that allowing local matters to be dealt with according to local planning policies is per se beneficial to the community. It may or may not be. If PGS reduces the extent of local matters provided to the community it will not be.

Q5.2 Funding of desirable infrastructure

65. As we believe that the current section 106 procedure by and large works well we have no suggestions as to how infrastructure might better be provided in future. We do not see any particular benefit in the development-site approach as we believe that the appropriate infrastructure provision, if any, depends on the individual development. It does not seem unreasonable, for example, for the provision of a new school to be required under an agreement for a major development where part of the land required for the development is the site of an existing school. We think it better to retain the current flexibility, albeit that this results in a loss of transparency. Transparency could be restored by the local authority publishing section 106 agreements on its website. These are probably available in any event under the Freedom of Information Act 2000. Our real concern is that commercially developers will be unwilling to both pay PGS and provide infrastructure, so it is likely to be far more difficult in future for local authorities to negotiate significant benefits under section 106 agreements.

Social housing

66. We agree with Para. 5.20 of the consultation paper that there could be a major impact on affordable housing. Indeed we think this probable. We think it questionable to what extent rationalising a local authority’s housing requirements is desirable. The current system not only provides such housing, but does so in a way that usually creates a social mix, which most would regard as desirable. There also seems to us a significant risk that if social housing is not provided in conjunction with commercial housing it will be located in areas which commercial developers feel unsuitable for housing, as local authorities will have to compete for housing land with commercial housebuilders.

Q6.1 Recycling PGS revenues

Locality or region?

67. We believe that the PGS should be recycled entirely to the local level. We think it unlikely that the PGS will generate additional revenue, but that it is more likely that it will engender a corresponding reduction in local authority benefits under section 106

Tax Representation

agreements. Accordingly it should be used to restore as far as possible those lost benefits.

68. Virtually all planning permission involves a change of use, which some local people will not favour. Both PGS and section 106 agreements ought to be used to provide a degree of comfort to such people that, as compensation for tolerating the development they, will obtain a local benefit.
69. We are unclear what is meant (Para. 6.4 of the consultation paper) by the overwhelming majority of PGS funds being recycled within the region. This seems to envisage much of such funds being made available to a far larger community than the local authority one that provided the planning gain. We do not believe that regional (as opposed to local) infrastructure projects should be dependent on PGS revenue if a purpose of PGS is to return to the community part of the value generated by planning consents that benefit ought to go to the local community which is directly affected by the development. Diverting such funds to regional projects seems to us to undermine the concept that the community should benefit by the community action in granting planning consent, as the benefit will be very much reduced if part of it is passed to regional authorities with which local residents do not readily identify.
70. We also doubt that giving local and regional stakeholders the ability to determine infrastructure priorities will ensure growth in a “timely and practicable way”. We believe that in many, if not most, cases, if commercial developers are permitted to create the developments that they want they will be keen to ensure that the infrastructure that is necessary for the development to be a success is in place. This may mean that priorities are dictated by need rather than by the aspirations of local stakeholders, but that is not necessarily a bad thing.

Q6.2 Regional infrastructure

71. We do not think PGS revenue is an appropriate means to finance regional infrastructure. Regional infrastructure should be a government responsibility. We believe that it is too remote to be seen by the local community as providing a specific benefit to that community.

Q6.3 Determining infrastructure priorities

72. Local and regional stakeholders are already able to help determine infrastructure priorities by providing input to the local and regional structure plans. Most local authorities go to great lengths to seek views when formulating structure plans. We suspect that the lesson that this provides is that most stakeholders are not particularly interested in providing input but make their voices heard only on issues that have a direct effect on them. We accordingly doubt that any system designed to involve stakeholders will be as successful as it might be hoped and could prove expensive to operate. Nevertheless, it might be worth undertaking a pilot study.

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ICAEW AND THE TAX FACULTY: WHO WE ARE

The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.

The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at tdtf@icaew.co.uk or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99; see http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I_43160,MNXI_43160.