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# Developing land

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# Developing Land:

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## Choosing the Right Route to Market

- **Making the right choice**
  
  - **Main ways to proceed:**
    - Option Agreement
    - Promotion Agreement
    - Hybrid Agreement
  
    - In House Development
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# Developing Land:

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## Choosing the Right Contractual Framework

### Option Agreement

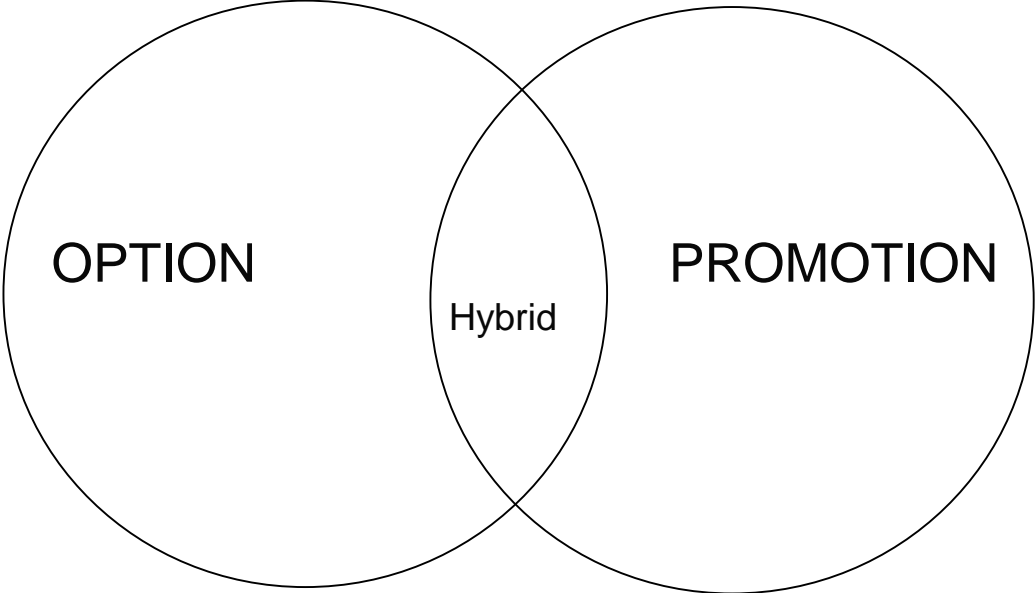
- Developer promotes the land
- Developer has sole right to purchase
- Price calculated by reference to formula based on value

### Promotion Agreement

- Developer promotes the land
  - Land offered on open market to highest bidder
  - Sale proceeds are shared
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# Hybrid Agreement

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# In House Development

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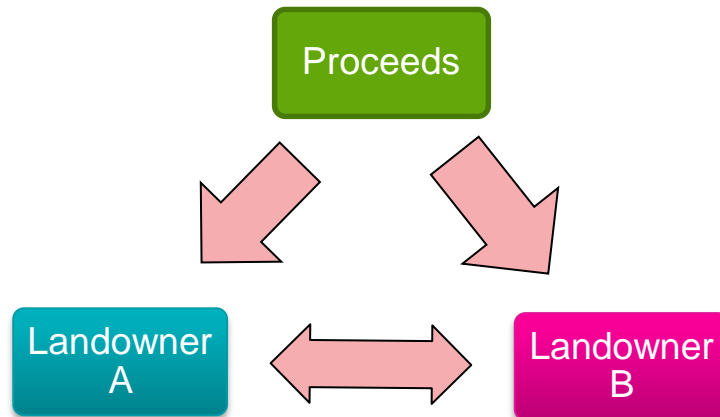
- Developer promotes the land
  - Landowner uses contractor to construct
  - To Golden Brick
  - To Completion
  - Sale / Retention
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# Multiple Landowners and Equalisation

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## What is “Equalisation”

- Neighbouring landowners need to come together to bring a site to market
- Want to share the costs and risks of development and sale and share the profits
- Agree that if they sell part of their land, they will pay a given proportion of the profits to the other landowner – an “equalisation payment”



# Multiple Landowner & Equalisation

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- **Risk of double tax**
  - **Some solutions**
    - Land Pooling
    - Cross Options
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# Multiple Landowner & Equalisation

Landowner	A	B	C	Total Proceeds	CGT
	30%	25%	45%		
Site 1		500,000		500,000	
	150,000	(375,000)	225,000	0	
CGT	30,000	100,000	45,000		175,000
Site 2	750,000			750,000	
	(562,500)	187,500	375,000	0	
CGT	150,000	37,500	75,000		262,500
Site 3			1,500,000	1,500,000	
	450,000	375,000	(825,000)	0	
				<u>2,750,000</u>	
CGT	90,000	75,000	300,000		<u>465,000</u>
					<u>902,500</u>
Effective Rate of tax				<b>32.82%</b>	



# Land pooling

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- Each landowner begins the process with discrete interests in land
  - Exchange that discrete interest to become a joint owner of the whole
  - *Jenkins (Inspector of Taxes) v Brown [1989] 1 W.L.R. 1163*
  - On sale of any part of the site, each landowner will be entitled to the given portion of sale proceeds based on their interests in the Pool Trust
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# Land pooling

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- Valuation is key
  - Practical land use issues
  - Tax pitfalls
  - Arrangement is hard to unravel
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# Land pooling – Tax overview

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- No CGT disposal on creation
- SDLT neutral on creation
- Structuring needed to preserve trading reliefs prior to sale

# Cross Options

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- Each landowner grants the others an option to buy an interest in their land
  - Interest depends on the relative amounts or values of land each landowner puts into the arrangement
  - Options granted to acquire at market value when granted; as land value goes up option increases in value
  - Surrender options in exchange for a payment
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# Cross Options – Tax overview

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- CGT disposal by grantor on grant of option
  - CGT for grantee when option surrendered
  - No SDLT on grant
  - SDLT payable on both land price and option payment when land sells – purchaser pays the same price in total, therefore no additional SDLT
  - VAT treatment depends on whether land is opted to tax or not
  - Preservation of trading reliefs prior to sale
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# SDLT in development arrangements

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- **Option Agreements**

- Grant of option is a land transaction = SDLT for grantee
- SDLT on sale of land; likely to be a linked transaction with grant

- **Promotion Agreement**

- Signing the promotion agreement is not a land transaction = no SDLT
- Payment to promoter not subject to SDLT
- NB SDLT chargeable on VAT amount if charged

- **In House Development**

- SDLT for purchasers
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# VAT in development arrangements

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- **Option agreements**

- Grant of option is an interest in land – exempt from VAT unless opted to tax
- Sale of land is exempt unless opted to tax

- **Promotion agreements**

- Promoter's fee is subject to VAT
  - Recovery only if land is opted to tax
  - Promoter in JV with landowner?
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# Transactions in UK Land Code

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- *“The purpose of this legislation is to ensure that profits from activities which, when looked at in the round, amount to (i) a trade in land or (ii) a trade of developing land, are taxed as trading profits. It is not the purpose of these rules to alter the treatment of activity that is clearly investment.”*

HMRC, BIM60555

- ss.517A-517U Income Tax Act 2007 / ss.356OA-356OT Corporation Tax Act 2010
  - Disposals of land – s.517B ITA/s.356OB CTA
  - Disposals of property “deriving its value from land” – s.517D ITA/s.356OD CTA
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# In House Development – Tax Overview

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- **VAT** – zero rated first grant of major interest at completion or golden brick
  - **SDLT** – payable by individual purchaser or upon sale of whole site
  - **Direct Tax** – Income Tax rather than CGT as trade
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