

Structures and Buildings Allowance – draft secondary legislation 13 March 2019



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To: contact.capitalallowances@hmrc.gsi.gov.uk

Introduction

1. The British Property Federation (BPF) represents the real estate sector – an industry with a market value of £900bn which contributed more than £60bn to the economy in 2016¹. 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. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. We are supportive of government's drive to increase tax competitiveness and welcome the opportunity to provide comments on this draft legislation. In order to make sure this measure achieves its policy objective of incentivising investment, it is critical that the allowance is simple and straight forward to claim. To that end, we commend the decision to simplify the record keeping obligations around the disuse and demolition of buildings. We would encourage government to further simplify the compliance burden in order to ensure that complexity is not a blocker to the success of these measures.
3. Our more detailed comments on the draft legislation are included in Appendix 1.
4. We would be pleased to discuss our comments with you in more detail. Please do not hesitate to get in touch if you require further information:

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Appendix 1: Comments on draft legislation

270AA Structures and buildings allowances

5. *Subsection (2)(b)(i)* - By way of background, following a development or refurbishment project, the final fee to the developer, known as the retention, is often held back, typically for a period of 12 months, until all snagging works have been carried out. The building will normally be occupied long before the final retention payment is made. Furthermore, developments and refurbishments will involve tens or hundreds of invoices, some of which will be paid after the building is first occupied. It would be helpful if similar provisions were available as for a refurbishment, where all invoices in a given accounting period can be deemed to be incurred on a single date for ease of compliance.
6. The point when expenditure is incurred is already defined for capital allowances purposes and is generally well understood. Subject to certain exceptions, it is the point in time when the obligation to pay becomes unconditional. It would be helpful if the SBA guidance can cross reference to the guidance in the CA manuals in this regard (at CA11800).

270IA Evidence of qualifying expenditure

7. *Subsection (3)(b)* - the rules require a current owner to obtain an allowance statement from the previous owner. There will be times when a current owner may need to go back to obtain information from an owner before the previous owner. Therefore, could the language of this clause be expanded to include any prior owner.
8. *Subsection (4)* – the wording implies that it is necessary to have an allowance statement for every expenditure on every building or structure. In practice it would be simpler if additional lines could be added to existing allowance statements to show where new expenditure has been incurred – to avoid the need for multiple allowance statements relating to the same building.
9. *Subsection (4)(a)* – this section requires the date of the earliest written contract to be included in the allowance statement. Given it is only the commencement provisions that require this information, it seems unnecessary to require this information to be collated for all future claims. We would recommend that this requirement is removed completely – as it is not even possible to make an SBA claim unless the criteria within the commencement provisions have been met. However, if there are remaining concerns on HMRC's part, the commencement provision could be simplified by introducing a 2-year transition period on which the current provisions would apply, after which qualification should then revert to the date of first use, without the need for specific reference to contract dates.

Other comments:

Capital gains tax

10. Some concerns have been raised around how these rules interact with rules affecting the calculation of chargeable gains, including TCGA 1992. In particular, there may be practical issues around the application of the provisions dealing with long leases (35 years or more) and the interaction with the wasting asset provisions (in sch 8 of TCGA). We would be glad to have a meeting to talk through how these rules are

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intended to interact with the calculation of chargeable gains, as there has been little communication of the government's policy intent in this regard.

Reassessment of SBAs following a capital allowances inquiry

11. There will be cases when a capital allowances plant and machinery claim may be disputed and reduced following an HMRC inquiry. In the same way that it is possible for capital expenditure to be reallocated to different capital allowances pools (under FA 1998 Sch.18, Part IX), we assume that any disputed amount could be transferred to the SBA claim, even if it is outside the normal time limit. It would be helpful if this could be set out in the legislation or guidance.

Partnerships and income transparent unit trusts

12. The regulations deal with the position of authorised contractual schemes by inclusion of provisions corresponding to those in sections 262AA-262FF (application of plant and machinery allowances) but do not make any provision for partnerships or income transparent unit trusts. We would recommend that this is addressed – including the addition of regulations equivalent to sections 263 and 264 CAA (plant and machinery allowances for partnerships).

ⁱ Property Data Report 2017, Property Industry Alliance