

Consultation Title	<b>Capital allowances for structures and buildings</b>
Date	<b>24/04/2019</b>
From	<b>Jason Rust, Legal Adviser Scottish Land &amp; Estates Stuart House Eskmills Business Park, EH21 7PB</b>
Telephone	<b>0131 653 5400</b>
Email	<b><a href="mailto:Jason.rust@scottishlandandestates.co.uk">Jason.rust@scottishlandandestates.co.uk</a></b>

Scottish Land & Estates (SLE) is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. SLE has a Taxation Group which is formed from a number of professional members who closely monitor fiscal policy and application. Representatives have met with the Office of Tax Simplification (OTS) and HMRC and we liaise closely with other stakeholder bodies across the UK through the Agricultural Representatives Fiscal Group. We have long been interested in the operability of taxation policy and guidance as it effects our membership.

SLE is pleased to respond to the invitation for comment on the detailed draft secondary legislation for the new non-residential structures and buildings allowance (SBA). While welcoming the introduction of the SBA, SLE considers there remain issues with the HMRC Technical Note produced and that there are a number of points which require to be addressed prior to the secondary legislation being finalised.

Overall, SLE does feel that an enhanced rate of SBA based on environmental efficiency should be built into later versions of SBA, not least given the current environment themes in contemporary news. We feel that encouraging better thermal efficiency and use of sustainable materials would fit with wider government policy objectives.

We also have a concern that the SBA creates new categories of expenditure – separately for the structure or building, and then for any subsequent capital expenditure on it - which will have to be identified and tracked for tax purposes. We have addressed issues around administration and record-keeping in our comments below.

One key area of concern is the interaction between SBA and capital gains which we have also noted in our response below. We understand that for SBA there is no claw-back through the capital allowances computation. The amount of SBA claimed will increase the taxable capital gain as it is deducted from the allowable cost, so there is potentially a full or partial claw-back of relief given. This is a potential serious disadvantage and arguably goes against the policy intent.

## **Definitions**

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We have some concerns that the current draft lacks adequate definition. To provide fairness, consistency and certainty for taxpayers as the Office of Tax Simplification seeks, we recommend that where possible, existing capital allowances definitions are used. It is important that taxpayers are clear as to the scope of the allowance and their eligibility and SLE welcomes HMRC's intention not to create a regime with overly complex compliance

requirements. This is also especially relevant from the perspective on anti-avoidance rules which should be transparent and proportionate.

We appreciate that HMRC has sought to clarify the instances where expenditure on land or 'residential use' property would be ineligible for the relief, but while certain asset classes will be excluded the draft legislation is not comprehensive which may well result in taxpayer uncertainty.

### **Records/Administration**

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SLE can foresee the requirements for retaining records as being onerous and may present difficulties where structures and buildings are acquired second-hand and no records have been maintained by the previous owner. The draft legislation is clear that in instances where relevant asset transactions or development projects take place and appropriate documentation is not retained, claims by current and future owners would be restricted to nil.

In terms of the allowance statement the requirement to supply "other supplementary information as HMRC may reasonably require" is concerning because on the face of it this allows HMRC to ask for anything (within reason) and it is impossible to predict in advance what HMRC might want.

Estimates cannot be used and if actual amounts cannot be shown, taxpayers' expenditure is treated as nil. This seems severe because sometimes price is commercially sensitive, and estimating is the only practical option. Estimates by specialist quantity surveyors are well-established and reliable and broadly accepted by HMRC for most other capital allowances purposes.

There is potential for SBA to become a complicated relief requiring record keeping over numerous years for many sites and structures. We would favour an extension of the Annual Investment Allowance to include SBA expenditure for Small and Medium Enterprises (SME). This would allow most of an SME's expenditure to be tax relievable. This would provide an accelerated deduction whilst reducing administrative requirements and we would welcome investigation of this.

### **Contributions**

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There is no reference to contributions within the HMRC Technical Note. Where contributions are made by a landowner towards local community or infrastructure works contributions should benefit from the SBA relief on the basis they are typically required for, or relate to, an associated building or structure.

### **Capital Gains**

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A policy objective of the introduction of SBA relief is "to stimulate investment in structures and buildings that are intended for commercial activity" as stated in the HMRC Technical Note. However, this might not in fact be achieved if the relief is clawed back on the disposal of an asset (via a corresponding reduction in base cost in line with the SBA claimed) such that it only provides a timing benefit. We are therefore of the view that SBA will not achieve its policy intention and some taxpayers may think it is small and hardly worth the effort which would be a missed opportunity.

### **Period of disuse of structure or building**

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SLE considers the changes made are welcome in removing complications. The previous proposals appeared to be complex and burdensome to manage. The change means that SBA will remain available, with no prohibition for periods of disuse, which ensures legitimate expenditure remains recognised and avoids deterrence or reduction of potential investment.

### **Apportionment**

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SLE recognises that where a property has some areas which qualify, for example commercial and some which do not, for example residential, then an appropriate proportion of the costs will qualify for SBA. However, a structure or building will not be in qualifying use *at all* if the qualifying purpose (i.e. business use) is 'insignificant'. We regret that this subjective threshold is not defined, except that it must be just and reasonable. The October 2018 guidance indicated that the threshold for insignificant might be 10% or less, but this has not been clarified in the legislation.