# Tax relief on 'dirty places'

Almost a decade on from the introduction of land remediation relief (LRR), the Government has decided to modernise the current scheme. With the publication of the Pre-Budget Report 2008 and the accompanying Technical Note on 24 November 2008, HMRC aims to make the tax relief more accessible and provide increased focus to the redevelopment of brownfield sites.

The proposed areas of reform are:

1. Landfill tax exemption for waste from contaminated land.
2. Speed and certainty of claiming relief (LRR).
3. Japanese Knotweed to be included.
4. Long-term derelict land to be included.
5. Development focus – through planning guidelines (the Taylor Review).

HMRC recognises the need to reduce the administrative burden involved in providing separate evidence of contamination for LRR, a corporation tax relief. In an attempt to address the problem, HMRC has committed to provide guidance on how existing good practice risk assessments can be used as relevant evidence. Currently, it is considered good practice on proposed developments to undertake a risk assessment on the condition of the land, and this just needs to be taken a stage further to claim LRR.

While the Government's proposal to accept these risk assessments and other specialist reports should reduce the administrative burden on companies, it is also proposing to exclude relief from expenditure that companies are required by law to incur.

## 'Long-term derelict land'

From 1 April 2009, land defined as 'long-term derelict land' qualifies for the same relief as was available under LRR.

The Technical Note indicates that HMRC plans to publish guidelines on its interpretation of 'derelict land', in relation to LRR, with the proposed definition likely to restrict the scope of potentially qualifying expenditure to specific items – ie, those that are:

- directly linked to a derelict site;
- only required on derelict sites; or
- of sufficient scale as to present a genuine blockage to development.

Within the Treasury's consultation response, the Government has indicated that incurring expenditure on the removal of the following is likely to qualify for derelict land relief:

- post-tensioned concrete heavyweight construction;
- building foundations and machinery bases;
- reinforced concrete pile caps; and
- reinforced concrete basements.

Also incurring qualifying expenditure is:

- below-ground demolition of redundant services; and
- fees directly relating to the above items.

HMRC appears to accept that a significant number of brownfield sites requiring additional expenditure to make them usable were originally left outside of the existing LRR legislation. With the proposed extension of relief to include derelict land and treatment of Japanese Knotweed, it appears that HMRC is attempting to address that situation.

In the light of the current economic climate, the extension of LRR can only be a welcome introduction, since it provides potential relief/cash credit at a time when companies are under increasing economic pressure. The introduction of long-term derelict land relief and the encompassing of Japanese Knotweed is a significant step forward in making LRR accessible to developers, and there are many who are keen to see if it will fulfil its potential.

## Phasing out of landfill tax exemption

Part of the changes to land remediation rules in ss 43A and 43B, FA 1996, provide that a disposal of material at landfill sites is not chargeable to landfill tax if the material has come from contaminated land for which a certificate under s 43B has been issued.

This landfill exemption is to be phased out. The Landfill Tax (Material from Contaminated Land) (Phasing out of Exemption) Order 2008 SI 2008/2669 makes the relevant amendments to FA 2006. Apparently, the Government considers that the objective – to encourage waste disposal other than by landfill – will be better achieved by extending LRR.

Article 3, SI 2008/2669, provides that the necessary landfill tax exemption certificates can only be obtained if they are applied for before 1 December 2008. The exemption will finally be withdrawn from 1 April 2012.

## Rural economic generation and the tax reliefs

The planning policies for rural locations are to allow housing in areas that are *not* readily accessible by public transport – ie, an acceptable location for development.

There is scope for farmers and landowners in rural locations to clear contaminated land AND long-term derelict land and to create development opportunities. There are many who consider that it is preferable to build on a 'repaired dirty place' than greenfield sites.

The Taylor Review of Rural Economy and Affordable Housing was published in July 2008. The recommendation was basically that 'the consultation paper on a new PPS4: Planning for Sustainable Economic Development recognised that not all development in rural areas can be accessed by public transport and should not be refused simply on this ground, change of emphasis for which this review very much supports'.

## Summary

Despite the collapse in development land values, there is currently an opportunity to reclaim 'dirty places' tax efficiently and to create potential profit and cash flow.

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