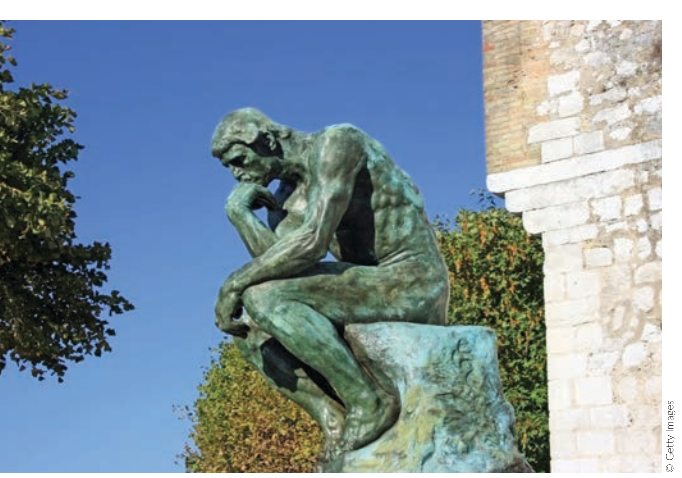
Food for thought?

Alun Oliver contemplates the imminent consultations for both capital allowances and land remediation tax relief announced in the Budget.



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Nearly three months on from Rachel Reeves's Budget statement, there has been much written and considerable fall out from many of the measures announced – in particular, the National Insurance changes, business rates and 'tinkering' with business and agricultural property reliefs and inheritance tax – with varying degrees of impact, depending on who you ask, for retail, farming and leisure sectors. The various forecasts and economic ambitions have been under much greater scrutiny of late, with many family and owner managed businesses concerned that the much vaunted 'growth' will be slow to arrive, if at all.

Other business taxes were left largely untouched with only the promise of a future review and/or consultation. Among these were capital allowances (CAs) and land remediation tax relief (LRTR). This article explores the merits of consultation on these stalwarts of business tax relief and how brave and radical the chancellor might be.

There has been an eagerness to hit the ground running, given the pace of change desired. We have seen an accelerated start with significant planning reforms, evolution of green belt, to accommodate some 'grey belt' and the brownfield passports – underpinned by the motivation to achieve 1.5 million new homes in the parliament.

Many have a cynical view of government consultations as having been collaboratively created by industry together with government when the reality is 'box ticking' or 'window dressing' against long before decided actions and without reference to taxpayer (or industry) inputs. In the 1990s, government sought to structure legislative changes to tax policy with new consultations designed to help reflect on the current state, consider the options to modify law and identify any issues or unintended consequences – the lauded aim being to achieve 'good and robust legislation'.

Key points

- Land remediation tax relief could be improved to help the government achieve its house-building target.
- The date of disuse should be updated to enable more sites to benefit from the tax relief and be regenerated into productive use.
- Stability and certainty is required to encourage businesses to invest.
- A genuine review and thorough consultation on the capital allowances regime should be welcomed.

Additionally, the consultation process is aimed at providing a reasonable timeline to enable businesses and taxpayers to prepare and adjust for the new paradigm – both fiscally, but also at a technology level – with modifications to operating systems and tax and accounting software. More importantly, as Kwasi Kwarteng found out to his cost, the market doesn't like surprises!

Land remediation tax relief

This relief has been available to those involved in regeneration of polluted sites since May 2001. It provides tax relief at up to 150% of the qualifying land remediation expenditure against UK corporation tax. Anyone seen to be (or connected to) the polluter is not allowed to claim it. For example, if a property investor built a property in the 1970s which included asbestos materials (most of which was considered a safe fireproofing and insulating material in UK until 1985 and only fully banned in 1999) and then looked to remediate that building now, they would be blocked from any tax relief as the polluter, the same entity having installed the contaminant. Third parties – having perhaps acquired a polluted building – are free to benefit from this valuable tax incentive to encourage regeneration – if they are required to remediate the asbestos installed by unconnected prior owners.

Budget announcements – LRTR

The Treasury's *Red Book* paragraph 2.42 sets out the government's aspirations to 'build more', citing this need as 'key to raising everyone's living standards and boosting economic growth. The government is committed to a brownfield first approach, prioritising the development of previously used land wherever possible'. This also ties in with the government's 'brownfield passport' announcements at the end of September 2024 where it sought to explore an intention for brownfield sites to have an expectation of planning approval in most cases - as long as they meet certain criteria – to accelerate regeneration and building of new homes. That said, there has been scant detail since, albeit some further

planning measures announced on 26 January 2025 in what the government called its 'bold reforms'. This is only six weeks or so after a new national planning policy framework (NPPF) coming into effect on 12 December 2024 suggests that Whitehall departments either are not entirely in sync, or that the 'lacklustre' economy since the Budget has necessitated further changes to boost positivity.

Specific to LRTR, in paragraph 2.43, the government recognised 'the positive impact that land remediation relief can have to further this goal, by providing extra tax relief for the substantial costs involved in cleaning up contaminated or derelict land and preparing it for redevelopment' - potentially an encouraging 'endorsement' of the current policy.

It went on to say at paragraph 2.44 that there had 'been limited changes to land remediation relief over the last 23 years, since it was first introduced in 2001'. These tax measures were last reviewed by the now defunct Office for Tax Simplification (OTS) in 2011, in which the OTS had recommended the removal of LRTR, but the then government decided to retain the tax relief - perhaps mindful of the essential support these measures were delivering across the London 2012 Olympic site. Fourteen years on and, mindful of the potential for LRTR to help progress its housing, regeneration and growth objectives, the government confirmed its intention to launch a fresh consultation in spring 2025 to review the effectiveness of LRTR and determine whether it is still meeting its objective of boosting development on brownfield land and evaluate its value for money – diverting investment from dense non-green belt locations.

In hard times, 'value for money' is often an easy route to justify an imminent reduction or removal of a tax relief from the gamut of measures available – potentially saving government money. There has been much new narrative since the election – delivery of 1.5 million new homes in this parliament, as well as growth and regeneration – brownfield passport, 'grey belt' changes and the most recent 'bold reforms' to cut 'red tape', boost housing near railway stations and transportation hubs, as well as accelerate national infrastructure and protect such important schemes from frivolous and/or superficial 'NIMBY' challenges, given the wider importance and national impact of some strategic assets – be they airports, data centres, energy farms, or major housing developments. With that context, it would seem unlikely that this government will see the £40m-50m annual cost as something to cut and abolish when it can clearly contribute to furthering regeneration and housing numbers on difficult sites – plagued by contamination or long term dereliction.

Stuck in the past

However, while reviewing the LRTR, it is hoped the government may look to improve it and ensure that it fully meets its current and future policy objectives – helping to accelerate further housing delivery. A major stumbling block for many years has been the part of relief targeting 'long-term dereliction' and specifically CTA 2009, s 1147 which only grants relief where the site has lain unused since 1 April 1998.

When this dereliction relief was introduced into the lexicon of UK corporation tax (a tweak in 2009 – in time for the Olympic site at Stratford), it was only 11 years that had to be reviewed and evidenced, at a time when lease terms were frequently 20 to 35 years. Yet, despite there being a mechanism within the legislation (s 1147(3A)) to allow this 'operative date' to be modified – it has yet to be used. This inertia has in effect nullified the tax relief for the majority of derelict sites.

The burden of proof – proving a negative that a site has not been in economic use – is almost certainly impossible to achieve on all but a handful of 'hardcore' sites which may have well documented records of when a facility closed and is an extreme rarity. It would have to have been disused now for 27 years entirely without car boot sales, car or lorry parking, or other temporary, but economic, uses. The changes to property tenure over this period also adds a further dimension of complexity in the record keeping. Leases can now often be five to 15 years and thus problematic sites have tended to be traded more frequently, making it more difficult to maintain a complete audit trail of the site's use over 27 years (and counting), to validate and prove eligibility for LRTR. These challenges just get increasingly difficult each and every day – without a revision to the legislative basis and the operative date. In short, the date of disuse is in urgent need of an update to enable more sites to benefit from the tax relief and be regenerated into productive use – whether for commercial properties or for more housing.

Barriers to regeneration

In addition to contamination and long-term dereliction, there are other 'barriers to development' that blight sites. These necessitate significant investment or costs to overcome before new houses or wider development can proceed. Among these are 'air' and 'water' that are specifically excluded from eligible contaminants to be considered for LRTR – inhibiting works such as mineshaft grouting, a frequent requirement to remedy previous industrial mining activity, or flood defences. Additionally, poor quality ground that may necessitate significant geotechnical works to enable appropriate development, or other naturally occurring harmful substances such as thaumasite, giant hogweed and other invasive species. Expanding the scope of LRTR and enabling such barriers to become eligible for tax relief – could ensure more timely and extensive regeneration – helping to increase housing numbers towards that 1.5 million homes.

A more radical approach might be to re-brand it 'regeneration tax relief' and make the criteria:

- Long-term dereliction (with a ten to 12 year threshold);
- Contamination;
- significant barriers to regeneration (to enable a broader range of site issues to be eligible for tax relief) thus unlocking the sites for re-use and redevelopment; and
- waived or reduced community infrastructure levy (CIL) for brownfield sites.

These criteria can then be amended over time as required to address specific issues and modified by statutory instrument to expand or retract the definitions applicable. All advisers ask, is that once government changes anything – let it run for five or ten years without constant changes – such as we have seen to annual investment allowances (AIAs) - that create uncertainty and thus lack of considered action.

Budget announcements – capital allowances

Red Book paragraphs 5.115 and 5.116 referred to the need for ‘greater clarity on what qualifies for capital allowances’ and said that ‘HMRC will continue to work with stakeholders to improve and clarify guidance on areas of uncertainty within the capital allowances system’, including ‘a new capital allowances consultation ... in the coming months that explores the tax treatment of predevelopment costs’.

Elsewhere the government highlighted the importance that capital allowances play as a vital element to enhance economic growth and that ‘generous capital allowances can help to influence investment decisions, by reducing the cost of capital and can also help to simplify the decision making process in boardrooms’. Yet due to more recent instability and unpredictability, with temporary measures and previous constant changes to the amount of the AIAs, there was a clear need to provide certainty - maintaining ‘the core structure of the generous system for capital allowances that is currently in place for the duration of this parliament’.

Some of the uncertainty, rather than derived from the previous administration, is a result of recent case law too. Evolving precedent decisions impact those assets that are eligible or ineligible for this valuable tax relief, whether as plant and machinery allowances (PMAs), integral feature allowances (IFAs) or structures and buildings allowances (SBAs).

After a relatively stable period and only moderate changes to capital allowances case law between 2000 and 2020 with limited impacts, there has been a flurry of significant new decisions on large ‘infrastructure’ projects – most notably *Gunfleet Sands Ltd and others v CRC* [2024] STC 177; *CRC v SSE Generation Limited* [2023] STC 963; *Urenco Chemplants Ltd and others v CRC* [2023] STC 54; *Cheshire Cavity Storage 1 Ltd and another v CRC* [2022] STC 622; as well as *Mersey Docks and Harbour Company Limited* (TC9391).

These decisions have looked at the fundamental meaning of plant and machinery (and ‘provision of’ and predevelopment costs/fees) and specifically Lists A, B and C in CAA 2001, s 21, s 22 and s 23. I don’t propose to recap these cases here as they have been covered in earlier editions. Furthermore, the taxpayers win in *Mersey Docks* may yet take some time to become permanent because it is expected HMRC will progress further legal challenges given the £57m sum and nature of the decision. All in all, uncertainty means taxpayers making investment decisions in boardrooms lack confidence that these tax breaks will be sustained and available against their projects, so often make their investment decisions assuming the worst.

Tax relief becomes a ‘cherry on the cake’ bonus rather than a driving force for investment. Unfortunately, government support and encouragement through tax relief hasn’t always been reciprocated by HMRC’s approach to enforcement. Consistency and clarity will enable investment to be cognisant of the available tax relief and drive growth and prosperity.

Hence a genuine review and thorough consultation on the capital allowances regime should be welcomed – so long as the justification is to ensure the tax relief supports businesses to invest now and into the future and isn’t cynically about dialling down tax savings to capture more for the exchequer. New and future industries must have scope to be included, or new categories accepted and defined within these lists of eligible, or not excluded assets, given they haven’t changed significantly since their initial introduction by FA 1994 (as Sch AA1) and the current CAA 2001 lists. A modern review must support future (and current) investment – whether alternative energy, minimising waste or accelerating data/information technology/artificial intelligence and carbon capture – in all forward facing.

Food for thought

Given the government’s clear desire to exceed any preceding administration (since 1977 at least) in boosting housing units above the annual target of 300,000, it seems to me that bringing build-to-rent (BTR) or the private rented sector (PRS) into the realms of capital allowances might be worth considering. I am not proposing all private households should benefit, but large scale developments (with perhaps a minimum threshold of 25, 50 or 75 units) could enjoy capital allowances tax relief to encourage investors to build more, better quality and accelerate the delivery of much needed new homes. After all, a tower block hotel in central Leeds enjoys 100% capital allowances, whereas a BTR landlord that is constructing (in physical terms) a very similar building for housing has negligible tax relief.

In the government’s own words, the outcome of any consultation must ‘support cross-economy business investment and our growth mission ... world-leading, giving the UK a competitive edge while being simple, thereby mitigating error and abuse risks’.

Tax policy must evolve and move on from anachronistic ideals if societal needs have also evolved. Such review and consultation would, to me, undoubtedly enable greater investment in new housing stock and/or rent reductions – taking into account the net cost, after tax relief.

Too often in dialogue with HMRC or the Treasury there is a requirement that policy changes are ‘tax neutral’ – don’t cost the exchequer – yet if policies deliver on many levels – housing, regeneration, net zero, climate impact, investment, jobs and prosperity – then surely some of these potential tax changes must be worthwhile the government contributing to the costs through these valuable reliefs. ●

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E3 Consulting won the best independent tax consultancy firm award at the Tolley’s Taxation Awards 2024.

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