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HMRC clamps down on abuse of Business Premises Renovation Allowances

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Tax analysis: Steven Bone, director of the Capital Allowances Partnership Ltd, examines government proposals to prevent the Business Premises Renovation Allowance (BPRA) regime being used to avoid tax.

Original news

Consultation on a review of Business Premises Renovation Allowances

Concern that the BPRA is being exploited for tax avoidance purposes has prompted HMRC to review the scheme. The BPRA gives investors tax relief for capital costs involved in regenerating buildings for business use. The buildings must be in a designated disadvantaged area and have been empty for at least a year. HMRC outlined its concerns and proposed some changes in a technical note issued in July, and it is looking for comments from interested parties by 30 September.

What was the original purpose of the BPRA, and how does HMRC think it is being misused?

The BPRA is an urban regeneration measure to encourage private investors to bring former premises back into use in designated deprived or disadvantaged areas. It provides 100% allowances on the capital costs of renovation.

The BPRA legislation is relatively light-touch and straightforward. The problem is this makes it easier for people to interpret the wording liberally and find loopholes. The key phrase is 'qualifying expenditure', which is arguably defined quite widely. This causes a few problems, and there are four main ways in which BPRAs are being used for tax avoidance.

Interpretation

The allowance is available where money is spent converting buildings into business premises or 'in connection with' this, and people have interpreted this quite generously. For example, HMRC believes some are disproportionately weighting the money spent on the building so they can claim more back, by attributing a lot of money to the qualifying work on the building, or including lots of extras such as licence fees as being 'in connection with' the conversion.

Borrowing

You may have people borrowing money and putting it in to increase their tax allowance. You may have private investors putting in, for example, £100,000 but £60,000 of this will have been borrowed as part of the arrangements--so despite only risking £40,000 of their own money they get the capital allowances on £100,000.

Timing of claim

You get capital allowances when you spend money on qualifying works, which is usually at the time they are carried out. However, people have been spending the money upfront, long before they would normally expect to pay it, and so want to claim the tax advantage upfront. This results in people claiming when no renovation has yet taken place, and in the view of HMRC, may never take place. In order to qualify for BPRAs the building needs to have been unoccupied for one year before the works start. However, some people have claimed allowances when the building is actually occupied, on the basis it will be left empty for a year before it is renovated and so is arguably still a 'qualifying building'.

Limited liability partnerships (LLPs)

LLPs can be used to create tax advantages. Under partnership law, sharing ratios do not need to be in proportion to contributions or capital, and profits and losses do not need to be shared in the same proportions. LLPs allow loss-sharing and profit-sharing to be tweaked, and there is tremendous flexibility. When losses are made, individual partners may claim these, but those partners don't need to be included when it is making profits. The profits may be allocated to a company member who pays lower corporation tax rates or may be based overseas and not paying tax in the UK.

The intention behind the legislation was very clear--to ensure struggling brownfield sites come back into use. Now, however, a liberal interpretation of the rules and use of LLPs mean it is being used by wealthy investors to shelter tax.

What is HMRC proposing?

HMRC may add in several specific, focused pieces of legislation to clarify the law and close perceived loopholes.

They may also adopt a more 'belt and braces' approach by introducing a targeted anti-avoidance rule (TAAR). The idea of that is an overall rule which looks at the purpose of the scheme. If tax losses arise from claiming BPRAs and the arrangements are considered to be 'relevant tax avoidance' then BPRA claims would be ruled out. These schemes do look quite inventive and you can't blame HMRC for wanting to tackle them. Whether this would create additional uncertainty for the taxpayer is not clear.

The tide is turning on public attitudes to tax avoidance. The courts have also been taking a tougher line and a more 'purposive' approach to interpreting the words of statute. This is where they look to establish the purpose of the legislation, and has always been the European approach. It is the approach the Supreme Court took in the recent capital allowances case *Tower MCashback LLP and another v Revenue and Customs Commissioners* [2011] UKSC 19, [2011] All ER (D) 90 (May) which the taxpayer lost, and where the Justices made several references to looking at the matter 'purposively'.

I think it is likely HMRC might introduce both focused rules and the TAAR proposals, but it is impossible to say. The BPRA scheme ends in 2017. It has been extended by five years once already and so might be extended again.

How would partnerships be affected by the proposed changes?

HMRC already intends to change the tax rules on partnerships to stop tax losses being used where they arise from arrangements like these. LLPs could be deterred from using tax avoidance schemes, or they may be caught by the new rules.

Are there similar targeted anti avoidance rules in the existing capital allowances legislation?

HMRC introduced a similar measure in 2010 targeting another 100% capital allowances acceleration known as the annual investment allowance (AIA). The AIA applies to most plant and machinery and has a monetary cap which has varied between £25,000 and £250,000 at different times. There was concern it was being used to avoid tax so they brought in a TAAR which is similar in effect to the one proposed for BPRAs.

HMRC's Note on BPRA can be viewed here:
www.hmrc.gov.uk/drafts/bus-premises-renovation-allowances.pdf

Interviewed by Elisabeth Davidson.

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