

# A Green Success?

## Business premises renovation allowances

**B**usiness Premises Renovation Allowances (BPRAs) were first announced by Finance Act 2005, but only commenced on 11 April 2007 once concerns over EU state aid were finally overcome. The legislation (CAA 2001, Part 3A, ss 360A to 360Z4) forms part of the Government's green approach to regeneration, with the aim of bringing derelict or unused properties back into use. At present there is only a limited window of opportunity for claiming BPRAs, with the scheme expiring after 5 years, on 10 April 2012. In today's uncertain economy, will it provide an incentive to taxpayers to persuade them to invest, or will it go relatively unnoticed, as with some previously introduced green tax relief measures?

### THE BENEFITS

Since the turn of the new century the Government has sought to promote investment in green technology and brownfield sites through the introduction of various tax incentives. Unfortunately, experience to date has provided little positive feedback on these tax incentives. Take, for example, the 100% allowance available for investment in energy-efficient or environmentally beneficial plant. The acceleration of tax savings obtained by investors has historically been offset by the higher initial cost of that plant, compared to its 'inefficient' alternatives. However, the introduction from April 2008 of a lower rate of 'normal' allowances on integral features will improve the cash flow benefit of claiming the 100% allowance on items such as boilers, rather than opting for the cheaper alternative. Another 'green' incentive, land remediation relief, provides tax relief at 150% of the qualifying expenditure, rather than merely accelerating allowances. The relief is now being extended to include expenditure on treating Japanese Knotweed and remediating long-term derelict land. Sadly, this latter relief will in many cases be impossible to claim, since the land must have been derelict since 1 April 1998. At the same time HMRC is looking to restrict

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the relief to industrial contexts only, ending the previous relief available, for example, on removing asbestos from offices. The general view, therefore, is that so-called 'green reliefs' have been little more than gimmicks. So how do the benefits of BPRAs compare with those of their green counterparts? With the phasing out of IBAs, BPRAs provide some means of obtaining tax relief on capital building costs. BPRAs provide an initial allowance of 100% (or a 25% straight-line writing-down allowance) for qualifying expenditure (essentially conversion or renovation) on a commercial building or structure that satisfies the following conditions:

- the last use of the premises was not as a dwelling
- the business premises is located in a *disadvantaged area*
- the premises has been *unused for at least a year* immediately before the works begin
- expenditure is incurred, by an entity holding a *relevant interest*, on *converting* or *renovating* a business premises and
- the property is a *qualifying business premises*.

### DISADVANTAGED AREAS

There has been some confusion as to the location and extent of the disadvantaged areas for the purpose of BPRAs. The initial legislation stated that the areas designated as disadvantaged for BPRAs were those referred to in Finance Act 2003, Sch 6 (stamp duty land tax: disadvantaged areas relief). However, since implementation it has been announced that BPRAs disadvantaged areas are now:

- areas specified as development areas by the Assisted Areas Order 2007 (SI 2007/107) and
- Northern Ireland.

In order to check whether a property is in a disadvantaged area on the date on which the work begins, you can either use the post code database, which is at <http://www.lexisurl.com/hqWc5>, or look up the Assisted Areas Order at <http://www.lexisurl.com/ULCKN>. The specified areas differ from the SDLT disadvantaged areas, but still include areas that one would not normally think of as 'disadvantaged': for example, parts of Birmingham city centre. In most cases it is individual wards within local authority areas that are designated. Consequently, neighbouring streets may qualify for 100% tax relief, or for nothing. Similarly (because the SDLT definition of a 'disadvantaged area' is better known), taxpayers sometimes assume that BPRAs are available, when in fact they are not. If a qualifying building is situated partly in a disadvantaged area and partly outside it, HMRC guidelines suggest that a claim should be prepared based on a just and reasonable apportionment of the expenditure to find the part attributable to the disadvantaged area. In practice, it may be feasible and more beneficial to the client to find out exactly what amount of the expenditure relates to the qualifying part of the building, as it may provide more tax relief than a straight apportionment of the expenditure incurred.

### 12 MONTHS UNUSED

A qualifying building must have been unused throughout a period of one year ending immediately before the date the building works commence. However, in some circumstances this information may not be known, especially when property is acquired from a third party, and the acquisition date may have to be taken as the first void date. At this stage it is unknown how HMRC is going to satisfy itself that

the 12 months' vacancy period has been met, and to what extent it will require documentary evidence to substantiate a BPRAs claim. The 12-month rule is an arbitrary one, and some taxpayers may have deferred renovation projects, keeping a property unused, simply to meet this criterion. This can hardly be what the legislation intended.

## CONVERTING OR RENOVATING BUSINESS PREMISES

Qualifying expenditure for BPRAs comprises that laid out on converting or renovating a commercial building or structure. This does not include expenditure incurred on:

- acquiring land
- extending an existing building (except to the extent required for the purposes of entering and exiting the qualifying building)
- demolishing an existing building
- developing land next to an existing building
- the provision of loose plant or machinery or
- repairs, except to the extent that they are incidental to the cost of the renovation or conversion works.

The legislation applies to part of a building in the same way as it applies to a whole building. So, for example, if the third floor of a mixed-use multi-storey block has been unused for two years, even though the remaining floors have been fully occupied, any expenditure incurred on renovating or converting the third floor to bring it back into use as business premises will qualify for BPRAs.

## GREY AREAS

At this stage of the scheme there are several grey areas that are yet to be tested. A review of the existing capital allowances legislation may provide some indication on how various scenarios may be dealt with.

## Associated building costs

The legislation does not mention the treatment of associated building costs, such as preliminaries and professional fees. It would be logical to treat such expenditure in a similar manner as for an IBA building project, by apportioning the costs over the whole project expenditure.

## External works

Another ambiguous situation is where there is an ancillary car park attached to a qualifying building, which is within the disadvantaged area. Extrapolating the treatment for IBAs, it would seem logical that the renovation of the existing car park would qualify for BPRAs.

## Commencement of works

The structure of the legislation raises the question as to what activity constitutes commencing the conversion or renovation work. Does it mean the physical presence of works starting on site or, taking a more aggressive approach, does it include an application for planning permission for the change of use? In practical terms it should probably be the commencement of physical works on site but taxpayers should be aware of the potential problem of any pre-commencement activities.

## Common areas

The legislation does not specifically explain the treatment of expenditure on common areas of a building, such as stairways, lifts and even car parks. These common areas may be incidentally used by occupiers from each separate part of a building, including occupied areas and unoccupied areas. At this stage HMRC's intended approach is unclear. Three alternative scenarios could be:

- apportion the expenditure between qualifying and non-qualifying areas
- take the view that the common area is in use, even though not to full capacity, and therefore the BPRAs legislation is not applicable or
- follow a similar procedure as with IBAs and assess whether the use of the common area by the qualifying unoccupied area is negligible (that is, less than 25%) in respect of the whole building.

If the latter approach were accepted, the whole of the expenditure on the common areas may qualify if 25% or more of the building qualifies for BPRAs.

## RELEVANT INTEREST

The rules for determining the relevant interest generally mirror those for IBAs. However, the rules differ on the sale of a qualifying business premises, as BPRAs are only available to the person who carries out the conversion or renovation. Therefore a taxpayer who subsequently buys a relevant interest, after qualifying expenditure has been incurred by a vendor, cannot claim BPRAs on the premises. Nor can a landlord claim BPRAs on making a contribution to a tenant's expenditure.

## QUALIFYING BUSINESS PREMISES

Once conversion or renovation works are complete, the property must satisfy the requirements of being 'qualifying business premises'. Therefore the premises must be used, or available for letting for use, for a trade, profession or vocation, or as offices. So if a building was last used as an office, it need not have been used for a trade, vocation or profession. This potentially extends the

relief to premises last used by government bodies or charities (but only if they were used as offices).

Premises do not qualify where:

- they are used or available for use as a dwelling
- the relevant interest in the premises is held by a person carrying on a *relevant trade* or
- they are used wholly or partly for the purposes of a *relevant trade*.

A relevant trade is a trade in the following sectors:

- fisheries and aquaculture (activities such as fish farming)
- shipbuilding
- the coal industry
- the steel industry
- synthetic fibres
- the primary production of certain agricultural products and
- the manufacture or marketing of products which imitate or substitute for milk and milk products.

## BALANCING EVENTS

There is a balancing charge or allowance if there is a balancing event within seven years of the first use of the building after conversion or renovation. The main balancing events are:

- the sale of the relevant interest
- the cessation of the qualifying use
- the demolition of the qualifying building and
- the grant of a long lease (that is, more than 50 years) for a premium out of the relevant interest.

## GOING FORWARD

The uncertain economic climate brings into question the current and future success of BPRAs. Currently, with businesses struggling and more premises becoming vacant, is it the right time to bring derelict buildings back into use? Who will occupy them? Furthermore, with the burden on unlet business rates, will businesses really want to invest more money into ventures that may cost more in the long term if left unoccupied? This also raises the question of how many more unoccupied buildings will fall into the BPRAs legislation and whether HMRC will extend the window of opportunity for claiming in the future. On a cynical note, while the Government's deficit is increasing each day, it may be that now is a good time to invest.

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