Structures and Buildings Allowances: draft legislation

Large Corporate **OMB**

01 May 2019

HMRC have released draft legislation which sheds further light on the scope and operation of the new Structures and Buildings Allowances which came into effect in October last year.

It was announced at Budget 2018 that a new class of capital allowances – *Structures and Buildings Allowances (SBAs)* – would be introduced with immediate effect. In outline, SBAs provide relief for qualifying expenditure on new non-residential structures and buildings incurred on or after 29 October 2018 on a 2% per annum straight line basis.

As reported in February's Technical Newsdesk, no detailed legislation was released at the time of the Budget announcement, with the majority of the publicly available information on SBAs contained in a 13-page HMRC Technical Notice.

Following an initial round of consultation on this Technical Notice, draft secondary legislation for SBAs was published alongside the Spring Statement on 13 March 2019. This draft legislation was accompanied by a short introductory note highlighting a couple of areas where the Government has changed its approach as a result of the earlier consultation. Areas which have been changed include:

- Disuse – it is now proposed that relief will continue to be available throughout periods of disuse with no prohibition.
- Demolition – it is now proposed that when a building is demolished any unrelieved expenditure will be claimed as a deduction in the capital gains computation, instead of by continuing to claim 'shadow SBAs'.
- Leases – for leases of no more than 35 years' allowances will stay with the lessor. Allowances may transfer to the lessee where the lease exceeds 35 years and the amount payable as a capital sum is 75% or more of the total of that

capital amount and the retained interest.

The draft legislation provides more information on the scope and operation of SBAs, in particular the evidence requirements that will have to be met to make a claim. However, some questions remain unanswered. For example, the legislation contains no definition of the terms structure or building and it is unclear whether these simply take their natural meaning, or should be interpreted in line with TCGA 1992 s 21 and s 22. The position on the treatment of mixed residential and non-residential buildings also remains unclear.

In addition it is unclear how some aspects of the information that are required for a claim for the allowances will be provided in practice. For example, there is a need for a written statement of the earliest date of a written contract for the construction of the building or structure; if expenditure is incurred in-house, there may not be a written contract and we would hope that this would not cause the allowance statement to be disqualified. It may also be difficult in practice to obtain the information required if a structure or building is acquired from a developer.

The deadline for commenting on the draft legislation was 24 April 2019, and copies of the CIOT and ATT submissions are available on their respective websites.