Structures and Buildings Allowance – secondary legislation and HMRC response

Large Corporate **OMB**

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The regulations for the new Structures and Buildings Allowance have now been passed by Parliament. The final version of the secondary legislation was published with HMRC's response to previous rounds of consultation in June.

A new class of capital allowances – *Structures and Buildings Allowance (SBA)* – was announced with immediate effect at Budget 2018. In outline, the SBA provides 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 May's Technical Newsdesk, a draft Technical Notice was released for consultation at the time of the Budget announcement, followed by draft secondary legislation in March 2019.

The final version of the secondary legislation was laid before Parliament on 17 June 2019.

The regulations were debated and passed by the House of Commons on 3 July 2019. Our criticism of the general process of the introduction of these new rules was mentioned during the debate. Peter Dowd (Labour) said:

> *'The Chartered Institute of Taxation rightly criticised the Government over these new regulations, stating at the time of the 2018 Budget that "it is neither sensible nor responsible for the government to introduce reliefs into the tax system at a time before they have consulted upon the scope and application of the relief or fully considered, and are therefore able to legislate for, the details of the relief." It concluded that these regulations will only complicate matters,*

particularly given that plant and machinery are excluded. That means that taxpayers are still required to identify the plant and machinery in buildings, with the same grey area that currently exists between buildings, fixtures, plant and machinery. The administration of this new allowance will be substantial and burdensome for businesses, flying in the face of the Government's initial promise to simplify the tax system.'

Our work to achieve our charitable objectives, including a legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences was also recognised by Kirsty Blackman (SNP), who began her speech:

'Let me begin by thanking the Association of Taxation Technicians and the Chartered Institute of Taxation, which have provided me with some information so that I can help to scrutinise this incredibly technical piece of legislation.'

The full debate can be found on Hansard.

Also in June, HMRC published their response to the consultations on both the Technical Notice and draft legislation.

HMRC's consultation response confirms that there are no major changes to the previously announced scope of the SBA. In particular, the secondary legislation has not widened the boundaries for qualifying use, which maintains a wide exclusion for *residential property* which includes dwellings, prisons and student accommodation.

The legislation covering the evidence requirements which must be met by claimants also remains largely unchanged from the draft regulations published in March 2019. HMRC acknowledge that it may be difficult to meet these requirements in some cases, in particular when a structure or building is purchased from an overseas vendor. HMRC suggest that this issue will be addressed in guidance. The legislation does, however, allow evidence of expenditure to be obtained from any previous owner of a structure or building (and not just the immediately previous owner as was originally proposed).

Other changes in the final legislation include:

- removal of the seven-year limit on expenditure incurred prior to commencing a qualifying activity;

- new provisions to provide relief to lessees for capital expenditure they have incurred when a lease expires;
- more flexible rules for expenditure incurred after a building or structure has come into use;
- providing for SBA where a structure or building is purchased from the Crown or other person not within the charge to UK tax;
- modification of the rules where a person makes a contribution to another;
- clarification that assets used for purposes ancillary to residential use include those situated on land within the curtilage of a residential structure or building;
- modification of some of the amendments to TCGA 1992, including on prevention of double taxation, demolition and capital contributions; and
- clarification of the commencement provisions and the rules surrounding renovation or conversion of a building where a developer is involved.

HMRC have indicated that guidance will be published which will provide definitions and examples to assist with areas of ambiguity. In particular, this guidance will:

- provide further explanations of what constitutes qualifying expenditure;
- explain the definitions used in the legislation, such as *dwelling-house* and mixed-use building;
- cover the new, more flexible rules regarding cases where expenditure incurred after a building comes into use can be claimed; and
- clarify the treatment of successive leases.

As some of these definitions and issues are likely to be quite key to the operation of the SBA, it is disappointing that they will only be addressed in guidance, rather than in primary or secondary legislation. Nevertheless, we look forward to reviewing the guidance when it is published.

In addition, we would be interested to hear from members about any practical issues that arise when it comes to applying these new rules in practice. Please send details to either technical@ciot.org.uk or technical@att.org.uk.