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CAPITAL ALLOWANCES FOR STRUCTURES AND BUILDINGS

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to provide comments on the draft secondary legislation *Capital allowances for structures and buildings* ('the draft legislation') issued on 13 March 2019¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 Our response is set out below. Section 2 outlines our concerns regarding the application of the draft legislation to structures and buildings with mixed residential and non-residential use. Section 3 sets out some queries we have regarding the practical application of the requirement introduced by new section s2701A for those claiming structures and buildings allowances (SBAs) to meet the *allowance statement requirement*. Finally, in Section 4 we set out our further observations on specific areas of the draft legislation.
- 1.4 We would be pleased to discuss any aspect of this response further and contact details can be found in Section 5.
- 1.5 All legislative references in this response are to CAA 2001, unless otherwise stated.

2 Application of the draft legislation to buildings and structures with mixed residential and non-residential use

- 2.1 The technical notice *Capital allowances for structures and buildings* ('the technical notice') published on 29 October 2018 following the Budget 2018 announcement of the introduction of SBAs stated at paragraph 7 that "*Where there is mixed use - for example, between commercial and residential units in a development - relief will be reduced by apportionment.*". We had understood this to mean that the non-residential portion of mixed residential / non-residential properties (but not the residential portion) could qualify for SBAs.

¹ <https://www.gov.uk/government/consultations/draft-legislation-detailing-a-new-capital-allowance-for-new-non-residential-structures-and-buildings>

- 2.2 The introductory notice issued alongside the draft legislation does not indicate that there has been any change in this policy. Rather, it states in paragraph 5 that “*dwelling houses will not qualify, nor any part of a building used as a dwelling where the remainder of the building is commercial*”. This again appears to support the idea that non-residential areas of mixed residential / non-residential buildings can qualify for relief. However, it is not clear how the draft legislation provides for this.
- 2.3 Chapter 1 of the draft legislation states at s270AA(1)(c) that the new Part 2A applies if a building or structure is *not in residential use*. The definition of *residential use* is included in s270CF, and appears to operate at the level of the whole building or structure, without providing for only part of a single building or structure to be in *residential use*.
- 2.4 Section 270CF(4) goes on to say that “*any part of a building or structure that is used as a dwelling house (whether or not it is also used for any other purposes) is not in qualifying use*”. However, this does not assist in determining whether a structure or building which comprises both dwellings and commercial use is overall *not in residential use* for the purposes of s270AA(1)(c). Rather, this subsection appears to be relevant for the purposes of determining when allowances are available under s270AA(2)(b).
- 2.5 We note that s270EB allows for apportionment of expenditure where a buildings or structure is “*put to multiple uses*”. However, the definition of *put to multiple uses* in s270EB (3) concerns situations where a structure or building is used partly for a *qualifying activity* and partly for another (presumably non-qualifying) activity. A *qualifying activity* is defined in s270CA as a trade, property business etc. with no reference to the actual use of the property. It is therefore entirely possible for a property to be *qualifying use*, but part of that use to be for residential purposes. As a result, s270EB does not appear to assist us in determining whether SBAs are available for mixed residential / non-residential properties.
- 2.6 We understand from meetings held during the consultation on the technical notice that the intention may have been to deny SBAs where a building is extensively used for residential purposes. However, we do not see how under the draft legislation even a mainly non-residential property with a small residential element could qualify for relief. We note that such arrangements are fairly common, for example in large mixed use schemes which include a small element of residential accommodation (often as a requirement of planning approval) but where the majority is used for commercial shops, offices or hotel developments.
- 2.7 We would therefore recommend that the treatment of mixed residential / non-residential structures and buildings for SBA purposes be clarified, with the final legislation and guidance clearly reflecting this.

3 Allowance statement requirements

- 3.1 Section 270IA sets out that the amount of qualifying expenditure on a structure or building is treated as nil unless the *allowance statement requirement* is met. Broadly, this requirement will be met if:
- in cases where the current owner incurred the qualifying expenditure, the current owner makes an *allowance statement*; or
 - in cases where the current owner acquired the building or structure from another person, a copy of the *allowance statement* is acquired from the previous owner.

- 3.2 These rules raise a number of practical questions in situations where a structure or building changes hands. In particular:
- If the person incurring qualifying expenditure cannot or does not wish to claim SBAs they may not prepare an *allowance statement*. If a future purchaser wishes to claim SBAs, is it sufficient for the original owner to prepare and pass over an *allowance statement* just before sale?
 - How does the requirement to acquire a copy of the *allowance statement* from the previous owner apply where there is more than one previous owner, not all of whom have previously met the requirement? For example, if the immediate previous owner is a non-taxpayer who did not wish to claim SBAs, can the *allowance statement* be obtained directly from any previous owner prior to that immediate previous owner?

We would recommend that the application of the *allowance statement requirement* in these and similar situations be covered in guidance.

- 3.3 Section 270IA(4) sets out the information which must be contained in an *allowance statement*, which includes “*such other supplementary information as may be reasonably required by the Commissioners for Her Majesty’s Revenue and Customs*”. We are uncertain as to how this requirement could be applied in practice. In particular, we note that per s270IA(2) the *allowance statement requirement* has to be met by the current owner before they first make a claim. If the required supplementary information is not identified until after a claim is made and investigated by HMRC, then it is hard to see how this requirement can be met.
- 3.4 Finally, we note that it is unclear from the draft legislation how the requirements of s270IA will apply where there are different, discrete elements of expenditure on the same structure or building (for example, initial construction expenditure and later improvement work). Is a separate *allowance statement* required for each packet of expenditure?

4 Further comments on the draft legislation

- 4.1 We note that the draft legislation does not contain any definition of the terms *structure* or *building*. It is therefore unclear whether these are meant to take their natural meaning, or whether the definitions in s21 and s22 (which apply for plant and machinery purposes) are intended to apply in some way. We would recommend that this point be addressed in either the final legislation or in guidance.
- 4.2 Section 270AA(2)(ii) limits the period for which SBAs are available to a period of 50 years “*beginning with the day on which the building or structure is first brought into non-residential use*.” It is unclear how this applies where a building or structure initially has residential use, but is later converted to non-residential use. For example, where a block of student flats is constructed and then, ten years later, converted by the same owner into a hotel. In addition to the SBAs on the conversion costs, are SBAs available on the original construction costs for a period of 50 years from the date of conversion? In other words, does the SBA ‘clock’ start from year ten, rather than the year of construction?
- 4.3 Section 270AA(3)(b) sets out that a person ceases to be entitled to SBAs if a building or structure is demolished. We note that this may present practical difficulties where only part of a structure or building is demolished. For example, if fitting out works undertaken by a tenant are demolished as part of a regular remodelling what records will businesses need to keep to ensure that SBAs are no longer claimed on that element?

- 4.4 We believe that s270BA(a) should refer to s270BB to s270BE (Sale by a developer: used buildings and structures) rather than s270BB to s270BD (Sale by a developer: unused buildings and structures).
- 4.5 Section 270BB sets out how capital expenditure incurred on construction can qualify for SBAs. However, it is not clear whether this extends only to physical construction costs, or also includes associated costs and professional fees. It would be helpful to include a definition of what is meant by *capital expenditure incurred on construction* in the legislation to resolve this uncertainty.
- 4.6 We believe that s270BG (3) should refer to Stamp Duty Land Tax, rather than Stamp Duty.
- 4.7 Section 270CE (2) sets out that a building or structure is not treated as being in use for the purposes of a particular activity if the extent to which it is in use for a purpose is *insignificant*. It is unclear what level of use is deemed to be *insignificant* for these purposes. We would recommend that this point be addressed in guidance.
- 4.8 It is unclear why the draft legislation proposes amendments to s1147 CTA2009, as SBAs are not available on expenditure which qualifies for land remediation relief per s270BG (4)(b).

5 Contact details

- 5.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Emma Rawson (erawson@att.org.uk, mobile 07773 087111).

The Association of Taxation Technicians

6 Note

- 6.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,000 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.