



HM Revenue
& Customs

Capital allowances for structures and buildings

Summary of Responses
June 2019

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Executive Summary

- 1.1. On 29 October 2018, the Government introduced a new capital allowance – known as the Structures and Buildings Allowance (SBA) – for businesses who invest in newly built or renovated non-residential structures and buildings. It also published a technical note on the same day, that outlined the key features of this new allowance¹. The enabling powers for the SBA were legislated for in Finance Act 2019, giving taxpayers certainty about investments made since Budget 2018 and ensuring investments were not deferred. The government always intended to legislate for the details of SBA via secondary legislation, so that it could accommodate stakeholder views as far as possible.
- 1.2. The Government has sought external views on how the SBA should operate at a number of points:
 - The 29 October 2018 technical note invited views on the key features of the SBA, and asked four questions to ensure the legislation would meet the desired aims of the relief. This initial consultation closed on 31 January 2019. The Government invited responses via email, and held 6 well-attended consultation meetings with key external organisations.
 - A consultative committee met on 25 February 2019, to give views on an early draft of the secondary legislation, as well as to highlight key concerns.
 - The Government published draft secondary legislation² on 13 March 2019, that incorporated views that had already been received before that date. It then invited detailed comments on the draft legislation, and this consultation closed on 24 April 2019.
- 1.3. Overall, consultation responses and the committee provided several suggestions on how HMRC could enhance and clarify the SBA legislation. Most notable were suggestions to:
 - Clarify the definitions of 'residential building' and 'qualifying expenditure' in legislation and any accompanying guidance.
 - Examine how capital expenditure incurred by a person who holds a leasehold interest in the property will be relieved over the lifetime of the lease.
 - Help overcome difficulties in meeting the information requirements in cases where relief on overseas property is claimed.
 - Examine ways to reduce the potential administrative burden on taxpayers. Government proposals to disallow relief for extensive periods of disuse could place an unreasonable administrative burden on businesses with large sites with many separate (and independently unoccupied) units.

¹ <https://www.gov.uk/Government/publications/capital-allowances-for-structures-and-buildings-technical-note>

² <https://www.gov.uk/Government/consultations/draft-legislation-detailing-a-new-capital-allowance-for-new-non-residential-structures-and-buildings>

- 1.4. The Government wishes to express its thanks to all stakeholders who have taken part in the consultations, both following the publication of the initial *Capital Allowances for Structures and Buildings technical note*, and also to those who provided their views on the draft legislation. Stakeholder responses have been a considerable help in shaping the new allowance.
- 1.5. Following both these rounds of consultation, secondary legislation to bring in the new relief is to be laid before Parliament in summer 2019.

2. Introduction

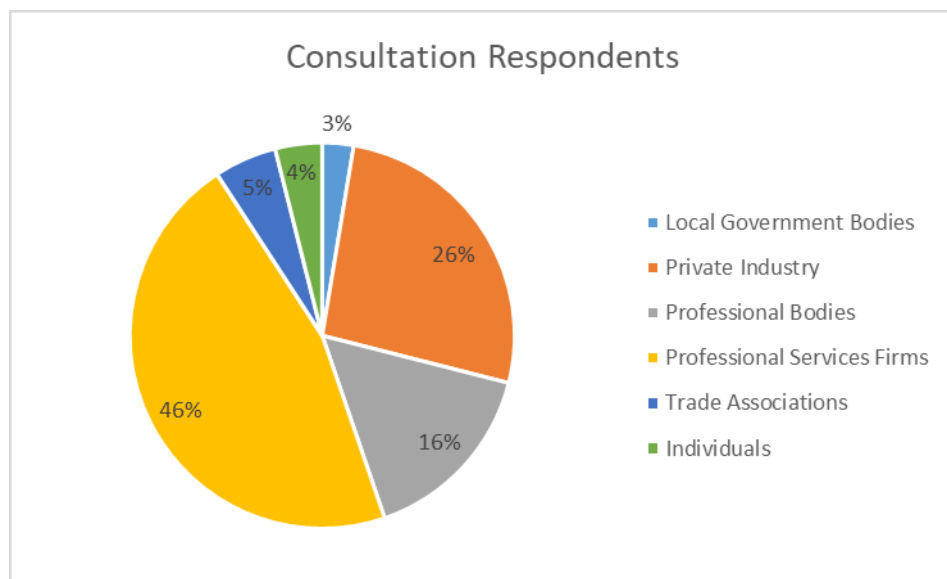
- 2.1. The Structures and Building Allowance (“the SBA”) was announced at Budget 2018 with immediate effect, through a power introduced by section 30 in FA 2019. The technical note was published setting out the main conditions for claiming the SBA. Stakeholders were invited to participate in an immediate consultation which ended on 31 January 2019. Following this first round of public consultation, a consultative committee was established to review the draft legislation before it was published at Spring Statement on 13 March 2019. This second consultation window invited further comments by 24 April 2019. This process was intended to give the best balance between preventing deferred investment, giving businesses certainty that the allowance will be implemented as soon as possible, whilst also allowing time for consultation.
- 2.2. The SBA aims to relieve the costs of physical construction of new non-residential structures and buildings commencing on or after 29 October 2018. This will encourage investment in the construction of new structures and buildings that are intended for commercial use, providing tax relief on the necessary works to bring them into existence and the improvement of existing structures and buildings, including the cost of renovating or converting existing premises for use in a qualifying activity.
- 2.3. As explained in the technical note, neither land nor dwellings will be eligible for relief. Where there is mixed use, for example between commercial and residential units in a building, relief will be allowed on the amount apportioned to a non-residential use on a just and reasonable basis. There is no relief for the cost of work spaces within domestic settings, such as home-offices.
- 2.4. The technical note sought views on four aspects of the SBA:
 1. To ensure the necessary exclusion of residential use, are there specific types of buildings or activities for which the draft legislation should provide?
 2. It has been necessary to reflect situations where the grant of a lease is akin to a sale of a property interest. Is the proposed boundary of 35 years for the transfer of the SBA from a lessor to a lessee appropriate?
 3. Are there specific issues regarding overseas property that require specific provision in the draft legislation?
 4. The Government has proposed a period of disuse during which the structure or buildings retains its eligibility for relief – up to two years ordinarily, or up to five years where it substantially no longer exists following extensive damage. Are there any significant practical problems that would prevent the proposed policy from working?
- 2.5. The technical note also sought views on any other features of the regime and invited interested parties to provide their views in writing as well as through

meetings. Six meetings were held with representative bodies between 19 December 2018 and 23 January 2019.

2.6. The consultation on the key features as described in the technical note closed on 31 January 2019. The secondary legislation was published on 13 March 2019, and the Government sought views on all aspects of the legislation. The second consultation period closed on 24 April 2019.

2.7. The Government received 49 written responses to the Technical Note and around 90 people attended meetings hosted by the Royal Institution of Chartered Surveyors, the Chartered Institute of Taxation, the Institute of Chartered Accountants in England and Wales, the Confederation of British Industry, The Law Society and The Infrastructure Forum. Respondents welcomed the chance to engage with the Government, and we are grateful to those who responded to the consultation and/or hosted consultation meetings. Across both stages of the consultation process on the draft legislation, HMRC received representations from 76 different companies, representative bodies, and individuals, including responses through email and face to face meetings. The respondents were as follows:

- 35 professional services firms (46%)
- 20 private industry representatives (26%)
- 12 professional bodies (16%)
- Four trade associations (5%)
- Three individuals (4%)
- Two local Government bodies (3%)



- 2.8. Chapter 3 of this document sets out stakeholders' views from the consultation we held on the technical note, and the Government's responses to the issues raised.
- 2.9. Chapter 4 of this document summarises the views expressed on the secondary legislation and the Government's responses to the issues raised.
- 2.10. Chapter 5 of this document outlines the next steps in respect of this measure.

3. Summary of responses to technical note

Responses to consultation questions raised in technical note

Question 1: To ensure the necessary exclusion of residential use, are there specific types of buildings or activities for which the draft legislation should provide?

- 3.1. 18 respondents expressed an opinion on this question.
- 3.2. 12 respondents expressed a desire for the definition of "residential use" to be clarified in the legislation. This was also reflected in discussions during three of the consultation meetings.
- 3.3. Seven respondents felt that the definition of non-residential should be widened to include properties such as student accommodation (four), holiday lettings (one), military accommodation (one), prisons (one), and farm accommodation (one). The consensus in the consultation meetings was that relief should be provided under the SBA for the construction of care homes. At two of the meetings, stakeholders raised issues around a shift from traditional care home provision towards more independent and assisted living provision. Stakeholders wanted the SBA to also be available in the case of provision of more independent but assisted residential accommodation.
- 3.4. Five respondents felt that excluding shared areas was not fair, and that the definition should be widened in line with existing plant and machinery regulations. This was also mentioned in two of the consultation meetings.
- 3.5. Three respondents felt that residential properties should be included within the scope of the SBA to address the housing shortage. This sentiment was also raised at three consultation meetings. Attendees at one meeting addressed the issue of employer-provided accommodation such as caretaker flats, and suggested a *de minimis* level below which residential use would not affect the overall calculation for SBA. Attendees at one meeting raised the issue of commercial developments being required to include accommodation by local councils in mixed-use developments, and whether that should be factored into any calculations of eligibility.
- 3.6. Attendees at three meetings expressed a desire for the SBA legislation to adopt existing definitions of "residential" in other legislation such as VAT or stamp duty land tax; however, no consensus was reached as to which definition should be used.

- 3.7. The Government's aim is for the SBA to be claimable where the building is designed to generate ongoing commercial activity, rather than for buildings designed for residential use; as a result, the legislation has not widened the boundaries for qualifying use. It is acknowledged that the definition of "residential" is wide; for example, serviced apartments may well contain non-residential facilities including a concierge, gyms or swimming pools. However, we consider that they nevertheless remain residential accommodation and will not qualify as a result. To assist claimants, guidance will be published alongside the legislation.

Question 2: It has been necessary to reflect situations where the grant of a lease is akin to a sale of a property interest. Is the proposed boundary of 35 years for the transfer of the SBA from a lessor to a lessee appropriate?

- 3.8. This question relates to a provision for the lessee to be entitled to claim the SBA on costs incurred by the landlord in cases where the lessee pays a premium of more than 75% of the total value of the property for the grant of a lease of 35 years or more. In such cases the landlord is not allowed to claim the SBA on construction costs but can claim for any period within the 50 years after the property is first used, after the lease expires, or is terminated.
- 3.9. 12 respondents expressed an opinion on this question.
- 3.10. Four felt that there needed to be clarification around succession rights, such as a scenario where a 30-year lease was followed by a subsequent 30-year lease. This was also raised in one of the consultation meetings.
- 3.11. Six respondents felt that there should be provisions to provide continued relief under the SBA on leasehold improvement costs incurred by the tenant, after a lease term ends, to the extent that they incur capital expenditure. This was also brought up in three of the meetings, including the need for contribution allowance provisions for any costs that are contributed by the landlord.
- 3.12. Three respondents expressed doubt that the sharing of information between lessee and lessor would meet the standard expected to provide an SBA claim. This was also raised in one of the meetings, as there was no incentive for a landlord to disclose construction costs.
- 3.13. Three respondents felt that the parties should be able to elect to transfer SBA, rather than this being governed by the length of the lease. Two felt that most commercial leases were for longer than 35 years. This view was also expressed by attendees during two consultation meetings. Attendees at two meetings felt that if the length of the lease is to govern who is eligible to claim SBAs, then the 75% value test is not needed.

The Government's response:

- 3.14. Overall, there was no consensus in favour of an alternative for the proposed approach set out at Budget 2018. The final legislation has not changed in respect of the lease boundary, but the guidance will take into account the clarification needed for succession rights.
- 3.15. The technical note proposed that any capital expenditure incurred by a lessee in respect of a lease with fewer than 50 years to run, will not be available for relief to lessees during the period following a lease's expiration. Instead, the technical note proposed that the remainder of the SBA due for any remaining part of the 50 year period could be claimed by the landlord. The government agrees with stakeholder views that the lessee and not the landlord should be entitled to relief in these circumstances. New legislation will provide relief for capital expenditure incurred by the lessee so that any capital costs for the remainder of the 50-year period under the SBA, will now be available to the lessee as a cost for capital gains tax purposes.

Question 3: Are there specific issues regarding overseas property that require specific provision in the draft legislation?

- 3.16. Nine respondents expressed an opinion on this question.
- 3.17. Six respondents were concerned about the ability of claimants to provide sufficient evidence in cases where the previous owners of property acquired overseas are not in the charge of UK tax (and therefore potentially lack the incentive to keep a record of the original construction costs). This sentiment was also expressed in five consultation meetings. Three respondents and attendees at two meetings suggested that using estimates or cost modelling in this case should be an acceptable alternative to using the exact costs.
- 3.18. Two respondents requested clarification on how the SBA would interact with existing hybrid rules to ensure that it wasn't susceptible to double deductions being claimed. This was also raised in one of the consultation meetings.
- 3.19. Two respondents requested clarification on what would happen if leases changed hands between overseas tenants.

The Government's response:

- 3.20. In order to maintain equal treatment between overseas and UK investments, the Government does not propose any changes to the SBA legislation in respect of expenditure on overseas structures and buildings. The Government acknowledges a potential lack of awareness of the SBA relief

that may arise when purchasing from parties not subject to UK tax, and guidance will cover these cases.

Question 4: The Government has proposed a period of disuse during which the structure or buildings retains its eligibility for relief – up to two years ordinarily, or up to five years where it substantially no longer exists following extensive damage. Are there any significant practical problems would prevent the proposed policy from working?

- 3.21. 11 respondents expressed an opinion on this question.
- 3.22. Four respondents thought that not allowing the SBA to be claimed on a disused property, but allowing it on a demolished building, creates an incentive not to repair a building but to demolish it instead. Furthermore, respondents suggested planning permission alone could take up to two years to be granted in many cases and therefore the two-year timeframe would not be sufficient for some properties to re-enter use. This sentiment was also expressed by attendees at three of the consultation meetings.
- 3.23. Four respondents expressed concerns about record keeping, both when receiving a property from a non-taxpayer after a period of disuse and in having to make apportionment calculations every year for partial disuse. Attendees at two of the consultation meetings also felt that evidence requirements would be burdensome, especially with large complex assets like retail or industrial centres. It was suggested that keeping records on each unit of a multi-unit asset, as well as for a single asset, would entail disproportionate record keeping burdens in order to correctly apply the disuse provisions for the asset as a whole.
- 3.24. Attendees at three of the meetings expressed the sentiment that this section of the legislation was unnecessary because businesses do not have commercial incentives to leave buildings empty.

The Government's response:

- 3.25. In response to the comments made by the respondents, the Government has amended the criteria for disuse. A structure or building will retain its SBA eligibility throughout a temporary period of disuse, provided it is not used for a residential purpose.

General Comments

- 3.26. 37 respondents requested clarification on one or more aspects of the legislation. The most common areas where clarifications were sought were regarding: the specific construction costs that will be covered (nine); whether

any structures would be excluded (five); and the interaction with other allowances and reliefs (six). Attendees at two of the consultation meetings requested clarification on the definition of a structure for the purposes of the legislation.

- 3.27. 16 respondents felt that the need to keep records over 50 years presented an administrative burden, especially when purchasing a property from persons not subject to tax. Attendees at one of the consultation meetings suggested that evidence statements should be made statutory, with penalties for not producing them on the sale of a property.
- 3.28. 11 respondents requested clarification on large projects which may have multiple different construction contracts, starting at various times and having independent periods of disuse. This was also raised in three of the consultation meetings. Another topic raised was cases of construction where the business has no relevant interest in the land (for complex projects there are frequently constructions of this nature, such as connecting roads). Attendees at one consultation meeting felt that this type of construction, where ancillary to a larger project, should be a qualifying cost.
- 3.29. Four respondents were doubtful that land values would be straightforward to calculate if apportioning original costs is allowed in order to calculate the amount on which relief is due. In one consultation meeting, attendees queried whether the developer's premium would be easy to calculate in cases where the land value increased as a result of the development.
- 3.30. Four respondents felt that when acquiring a property, it should be the choice of the new owners whether to claim SBA or Plant and Machinery allowances upon acquisition, rather than having to abide by the analysis undertaken by previous owners. This was also raised in one consultation meeting.
- 3.31. Attendees at three of the meetings requested more clarity on how the SBA would interact with Capital Gains Tax.
- 3.32. There was discussion in the consultation meetings about the rate of the SBA. It was suggested in one meeting that it should be increased for environmentally beneficial construction. Attendees at one meeting suggested that the allowance should be increased in the first year to take into account the increased risk of construction. Attendees at one meeting suggested that the SBA should instead be replaced by allowing structures and buildings to be added to the Special Rate capital allowances pool.
- 3.33. A sentiment raised in one consultation meeting was that, if the SBA is supposed to incentivise new buildings, then the original developer should be entitled to the whole amount of the allowance, as subsequent purchasers of the building are not constructing a structure or building afresh themselves.

- 3.34. Some respondents felt that limiting the relief to expenditure incurred for only seven years prior to the commencement of a qualifying activity was too restrictive and would not encourage pre-trading investment in qualifying assets.
- 3.35. The Government acknowledges the importance of clarity when defining qualifying expenditure. The guidance published alongside the legislation will provide definitions and examples to assist with areas of ambiguity. The Government agrees with the views of stakeholders regarding the limit on expenditure incurred before the qualifying activity begins and so has removed the seven-year restriction. The Government has also made the following further refinements in the legislation:
- More flexible rules to reduce the administrative burden of calculating allowances on expenditure incurred after a building or structure has come into use.
 - Giving allowances where a structure or building is purchased from the Crown or other person not within the charge of UK tax.
 - Modifying the rules for claiming allowances when a person makes a contribution to another person.
 - Allowing evidence of expenditure incurred to be obtained from any previous owner of the structure or building.
 - Clarifying that assets used for purposes ancillary to residential use include those assets situated on land within the curtilage of a residential structure or building.
 - Modifying some of the amendments to the TCGA. This includes preventing double taxation and double deductions and clarifying the rules on demolition. In addition, new rules have been introduced for capital contributions.

4. Summary of responses to draft legislation

- 4.1. The Government received 28 individual responses to the draft legislation and hosted a consultative committee meeting on 25 February 2019 attended by ten external stakeholders, representing private industry, professional bodies and professional service firms.
- 4.2. 26 respondents requested clarification on at least one aspect of the legislation. The most common areas which respondents requested clarification on were:
 - What qualifies as a "structure" when establishing qualifying expenditure;
 - How to calculate the date on which construction begins, especially when a project involved multiple stages of construction and preparatory contracts.
- 4.3. In order to help with complex claims the Government will publish guidance alongside the final legislation. In addition, the legislation has been amended to clarify the commencement provisions and rules surrounding renovation or conversion of a building where a developer is involved.
- 4.4. 21 respondents expressed concerns about the administrative challenge posed by retaining paperwork until disposal of an asset, along with the difficulties posed by obtaining documentation in the event of acquiring a qualifying asset from an entity not in the charge of UK tax.
- 4.5. The relaxation of the rules on disuse has reduced the administrative burden involved in calculating allowances for a multi-use site, and the legislation has been amended to enable the allowance statement, which specifies the amount of qualifying expenditure incurred, to be obtained from any previous owner of the structure or building. The Government's position is that the remaining administrative burden is reasonable, given that the relief offers businesses a clear incentive to invest in the construction and renovation of structures and buildings. Taxpayers can also elect to treat expenditure as qualifying from the first day of the subsequent chargeable period, in order to reduce the administrative burden.
- 4.6. 13 respondents felt that the interaction with Capital Gains Tax legislation made the SBA less attractive, especially in respect of buildings with a useful lifespan less than 50 years or owned by an individual who cannot set the capital loss against other profits. It was also suggested that a more generous regime should be introduced for faster depreciating assets.
- 4.7. It is the Government's position that the current interaction with the Capital Gains Tax regime is necessary in order to avoid offering relief twice for

qualifying expenditure on structures and buildings. We are providing a single regime for all businesses, investing in structures and buildings lasting anywhere from a few years to several decades.

5. Next Steps

- 5.1. Secondary legislation will be laid before Parliament in summer 2019, with amendments to reflect Government responses outlined above.
- 5.2. Guidance will be published on HMRC's website to accompany the legislation and to provide claimants with further explanations of what constitutes qualifying expenditure, an explanation of definitions used in the legislation (such as the definition of a dwelling-house and mixed use buildings), and new flexible rules regarding cases where expenditure incurred after a building comes into use can be claimed.

Annexe A: List of stakeholders who responded to the technical note and commented on the draft legislation

Representatives from the following companies and professional bodies provided responses, plus three individuals:

AAT	Confederation of British Industry	Institute of Chartered Accountants in England and Wales
Aecom	Chartered Institute of Taxation	Institute of Chartered Accountants of Scotland
Afilia Capital Allowances	Country Land and Business Association	IMH Advisory LLP
Allen & Overy	Cubico Sustainable Investments	Knight Frank
Association of Taxation Technicians	Dairy Crest	KPMG
AstraZeneca UK Ltd	Deloitte LLP	Lovell Consulting
BAE Systems	Derwent London	Mazars
Bryan Cave Leighton Paisner LLP	DHA Consulting	Memery Crystal
BDO	E3 Consulting	Miller Partnership
Beer & Pub Association	EDF Energy	Newcastle City Council
BPF	Ernst & Young	National Farmers Union
BPRE	FIAS Consulting	Norton Rose Fulbright
British Land	FTI Consulting	Operis
British Ports Association	Furasta	Plantworth Capital Allowances Consultants
British Property Federation	Gardiner & Theobald LLP	PricewaterhouseCoopers
Bryan Cave Leighton Paisner	Gateley Capitus	Royal Institution of Chartered Surveyors
Burges Salmon LLP	Gibson Dunn	RSM Tax & Accounting
The Central Association of Agricultural Valuers	Gleeds Advisory Ltd	RWE UK Group
Capsure Tax	Grant Thornton	Savills UK
Catax	Hargreaves Properties	Schroders
	Heathrow	

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