Structures and Buildings Allowance

BPF

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To: contact.capitalallowances@hmrc.gsi.gov.uk

Introduction

1. The British Property Federation (BPF) represents the real estate sector – an industry with a market value of £900bn which contributed more than £60bn to the economy in 2016[i]. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.

2. Over half of commercial property is rented - the sector is one of the most successful in the world at attracting domestic and overseas long-term investment capital into the renewal of the UK's towns and cities. Such large, long-term, patient investors are critical to the urban redevelopment and regeneration of our country, and crucial for creating and maintaining modern and productive work places.

3. While we support the Government's drive to increase tax competitiveness and appreciate that these measures are a step in the right direction, it should be noted that when these measures are looked at in conjunction with the reduction in rate of the integral features pool to 6%, many tax payers will be disadvantaged, in the short term at least, as a result of these combined changes to the capital allowances rules. It is also worth noting that we are yet to see how these measures will interact with the capital gains tax rules – should these measures end up being simply a timing difference, the allowance would not end up being as significant a tax incentive for investment.

4. Our primary concerns and recommendations are set out below with our more detailed responses to the questions posed in the technical note included in Appendix 1.

Key concerns and recommendations

5. **Simplicity and certainty**
   In order to make sure this measure achieves its policy objective of incentivising investment, it is critical that the allowance is simple and straight forward to claim. Investors need complete certainty that a claim will be eligible in order to factor it into investment decisions. In this regard, our primary concern is that the record keeping burden will be considerable over 50 years, as buildings are likely to be bought, sold and refurbished multiple times over this period, as well as having some unqualifying periods of disuse.

   In practical terms the three main simplifications we would recommend are:

   - Allow some estimate of original cost where the exact evidence of historical cost is not available.
   - Include some form of balancing adjustment so that it is not necessary to maintain records after a building has been demolished or comes to the end of its useful life.
   - Once the date of qualifying use has been established, it should not be necessary to track occupancy levels over the 50 year life of a building.

6. **A missed opportunity to encourage investment in our country's housing stock**
   In recent years, large scale professional investors have increasingly deployed capital in quasi-residential investment classes; whether this be purpose-built student accommodation blocks; the 'build-to-rent' sector; or the more nascent retirement living communities and supported living homes for the elderly. Investment in homes of all tenures is necessary to help address this country's housing crisis and by excluding all dwellings from this allowance, it is a missed opportunity to incentivise institutional and professional investment into our country's housing stock.

   Furthermore, large scale institutional investors considering potential investments do not make the same distinction between commercial and residential investment propositions in the same way the tax rules do, so it seems archaic for modern tax legislation to make this distinction. We appreciate that finding the appropriate definition for these large scale and professional investments is challenging; and as such, we have suggested some typical hallmarks of these investments within our submission (see response to question 1 within the appendix).

7. **Go green**
   It's a missed opportunity to encourage UK businesses to invest in the latest green technology. While previous iterations of capital allowances have attempted to provide relief for energy efficient items; we think there is scope to provide this incentive in a much simpler way alongside the structures and buildings allowance. In particular, these measures create an opportunity to look at the energy efficiency rating and operational performance of the building as a whole, rather than requiring a tax payer to itemise each qualifying item of expenditure.

8. We would be pleased to discuss our comments with you in more detail. Please do not hesitate to get in touch if you require further information:

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Appendix 1: Comments on Technical Note

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

9. Professional and institutional capital has become increasingly interested in residential asset classes in recent years. Not only do they stimulate new construction activity; they are an essential part of the solution to our country's housing crisis. It is a missed opportunity if these new allowances are not made available to this much needed investment.

10. While we appreciate that the government are not minded to extend the relief to housing which is rented out more generally, it would be possible to define the types of buildings which large scale professional investors are increasingly looking to invest in and develop - which are stimulating new construction and adding to our county's housing supply. See below some typical hallmarks or characteristics which could be used to help define the large-scale institutional investment in residential asset classes:

    I. **Buildings of scale** - these developments will have at least tens of units and more likely over a hundred units or beds within the same development. This hallmark could even be combined with a minimum level of investment which would indicate significant commercial investment.
    II. **Restrictions on individual resale** – these developments are built with the intention of renting out as a whole. This is critical to the business model as fragmented ownership and management of rental properties is significantly less efficient.
    III. **Single professional landlord and management** – by retaining control of the whole development, it is possible for the whole block to be professionally managed by a single professional manager. This not only brings efficiencies for the investor but also a high level, professional management service for the renter.
    IV. **Commitment to long-term tenancies** – while less applicable for student accommodation and care homes, the build-to-rent sector has committed to offering long-term tenancies – providing security of tenure for renters.
    V. **Additional services** – it is common for these assets to have ancillary services, more common areas and some bills or services included as part of the rent. This could range from wifi included in the rent, to significant additional healthcare services in the case of elderly living communities.

11. Alternatively, it may be easier to more closely define the type of dwellings that government do not intend to be the target of this relief.

12. Our overarching recommendation would be to open SBAs to large scale and professionally managed residential asset classes which are not only stimulating construction and adding to our nation's housing stock, but also providing a high standard of professional management for tenants. However, if government are not minded to broaden the allowance to capture these assets; we would recommend that the definition of "dwelling" which is already used elsewhere in the capital allowances legislation is applied to the SBA rules. This is the simplest approach as it would avoid the need to use multiple definitions of "dwelling" to split up expenses between their main capital allowances pools and their SBA claim.

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 SBA from a lessor to a lessee appropriate?

13. We would recommend that the allowance stays with the party that incurs the expense. If this measure is intended to incentivise investment, it should logically follow that the relief should stay with the party

incurring the expenditure. Furthermore, and as already noted, the record keeping burden is exacerbated when it is necessary to obtain evidence from a third party.

14. It may be more beneficial if the rules simply allowed the option to for the tenant to take on the claim where both parties agree (or even for the landlord to take on claims in respect of tenant contributions).

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

15. The issues we have already identified with respect to maintaining appropriate records will likely be exacerbated in the context of an overseas property, where previous owners may be even less likely to be aware of the necessary evidence requirements for making SBA claims if they are not UK tax payers. Therefore, a compromise solution of being able to estimate the historic construction costs of a building would be particularly helpful in this context.

Question 4: The government proposed a period of disuse during which the structure or buildings retains eligibility of relief – up to two years ordinarily or up to 5 years where it substantially no longer exists following extensive damage. Are there any significant practical problems that would prevent the proposed policy from working?

16. There will be a slightly unusual dynamic within the rules whereby a building which gets demolished would be entitled to continue to make claims indefinitely, whereas a demolition as a precursor to regeneration would only be entitled to 5 years of claims until the building returns to a qualifying state. It will be necessary to make sure that the rules do not create significantly different tax outcome for equivalent activities.

17. We would reiterate that one of our principal recommendations to introduce a balancing adjustment would address the particular complexity that arises when a building substantially no longer exists following extensive damage.

18. For additional simplicity, we would recommend that after the date of qualifying use has been established, it is not necessary to continue to track the qualifying use or periods of disuse – rather the allowance would be available until the building is used for a non-qualifying residential purpose.

Other comments – definitions and simplifications

19. Our remaining comments broadly relate to some definitions which could pose practical difficulties, and areas where we think there is scope to simplify the rules.

20. ***Date of construction***

21. It would be simplest and clearest if the timing of the allowance was linked with when the expenditure was incurred – this would be consistent with the other capital allowances rules. We appreciate that it may be harder to apply this principal more broadly within the commencement provisions – although we would welcome this approach as it would be a great simplification.

22. ***Date of qualifying use and periods of disuse***

23. This concept of qualifying use becomes increasingly complex when you consider a large shopping center or office block, or indeed a whole business park.

24. In order to avoid over complicating the legislation; some reasonable proxies or simplifications should be permitted to determine when a building or development is first occupied and when there are deemed to be periods of disuse – and the legislation should avoid the need to track every single unit.

25. While a landlord would be unlikely to actively keep a building void; it is worth noting that multi-tenanted buildings will almost always have a certain element of churn and as such, some percentage of the building will almost always be unoccupied. Therefore, it is important that the rules allow for this to avoid all owners of multi-tenanted buildings to be required to do apportionment calculations every year. There is limited risk to the exchequer given this is simply a question of when an allowance is claimed, rather than how much, which justifies erring on the side of simplification in respect of this aspect of the rules.

26. In order to reduce the admin burden of tracking the occupation levels of a building or collection of units on an annual basis, we would suggest that a building first comes into qualifying use when it is say, greater than 10% or 20% occupied. Once the initial test is met, then it should not be necessary to track occupation levels – only a change to non-qualifying use.

27. Given that owners of buildings will always be incentivised to make use of them, we think this would be a great simplification with limited downside potential for the exchequer.

28. ***Structures and buildings***

29. It would seem sensible if the starting point for what would be considered to qualify would be those costs which currently do not qualify for capital allowances – to make sure that the majority of build costs are captured somewhere.

30. It would be helpful if the definition is as broad as possible – in particular, to capture those investments which are ancillary to a development such as improvements to areas of public realm e.g. roads, car parks, communal outdoor spaces etc.

31. ***7-year period until first use***

32. Many larger scale developments including many infrastructure and regeneration projects will take longer than 7 years to construct. We would query whether there is a need to limit this period of qualifying expenditure at all? If there must be a limit, while there is no answer to ‘how long does a development take’, any increase from 7 years would be helpful. Additionally, there may be some helpful precedent in the ATED legislation to include some flexibility to limit the claim to 7 years until first use ‘unless steps are being taken to undertake the qualifying construction activity without delay’.

33. ***Valuation***

34. The apportionment of valuation between land and structure when purchasing from a developer may cause complexity. There may be merit in considering a set valuation method, perhaps linked to the RICS valuation, to ensure consistency of approach.

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[i] Property Data Report 2017, Property Industry Alliance