



TAXREP 51/13

(ICAEW REP 136/13)

ICAEW TAX REPRESENTATION

BUSINESS PREMISES RENOVATION ALLOWANCES

Comments submitted on 30 September 2013 by ICAEW Tax Faculty in response to the Technical Note Business Premises Renovation Allowances issued by HM Revenue & Customs on 18 July 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the Technical Note [Business Premises Renovation Allowances](#) published by HM Revenue & Customs on 18 July 2013.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
5. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

KEY POINT SUMMARY

7. We understand the Government's attempt to safeguard the BPRA policy against abuse and agree that it is important to ensure that the reliefs are only available as originally intended. It is equally important that investors can proceed with confidence and certainty regarding the net cost of their investment.
8. BPRA is a legitimate tax incentive and deals involving a syndicate of investors will be structured to make the most use of the available tax relief. It is important that HMRC's stance on BPRA investment schemes, and claims generally, is clarified so that investors continue to support vital regenerative projects.
9. We note that the Tax Impact Assessment states that this measure is not expected to lead to either a tax loss or gain to the Exchequer, but it seeks only to affect transactions attempting to exploit BPRA and Property Business Loss Relief.

GENERAL COMMENTS

10. The Technical Note in paras 4.2 to 4.5 discusses the BPRA policy purpose in relation to encouraging renovation of longer-term empty or derelict buildings.
11. In our experience, it does not necessarily follow that a building must be entirely empty for it to be derelict and economically unviable. A landlord may let substantial office spaces, particularly in the north of England at nil rental merely to pass to a tenant maintenance and services costs as well as empty business rates. A nil rental does not make a building viable.
12. Many large office buildings are held for occupation in a number, often a large number, of separate units each capable of occupation by a separate tenant. Such a building may be

deeply unviable commercially and largely empty, but a landlord might put tenants in one or more units if the opportunity arises. Such occupation will often not represent a profit rental to the landlord but can defray part of the holding costs. The occupation might be short-term, or the occupier a charity.

13. Under the present regime, a building has to be totally unoccupied for 12 months before BPRA is available. In order to obtain BPRA, such a landlord would have to empty out those few tenants (possibly incurring compensation costs) and forego up to 12 months rental on those units. That is not reasonable in a case where a building is essentially not financially viable. The landlord should be entitled to obtain what small revenue he can. It discourages developing some of the precise buildings that the government is targeting to benefit from this relief.

RESPONSES TO CONSULTATION QUESTIONS

Question 1: Would the legislative approach, set out at paragraphs 6.2 to 6.6, be effective in preventing attempts to include the value of elements, such as those outlined at paragraph 2.9, in claims to BPRA?

14. Yes, provided that in making such change, the initial policy objective of regenerating properties in disadvantaged areas is not undermined.

Question 2: For greater clarity, should the legislation contain a provision to the effect that elements of the sort described at paragraph 2.9 are specifically excluded?

15. Yes, in our view such a list could provide added clarity to the legislation and help inhibit any misapplication of the provisions.
16. For the avoidance of doubt it would be helpful if HMRC included details with examples of the trade process plant and machinery it regards as chattels for the purposes of the BPRA rules.

Question 3: Would this approach also be effective in deterring the use of circular, limited-recourse borrowing arrangements? If not, please give reasons for your views.

17. These changes should help deter artificially inflated claims, however, relief for legitimate up-front payments via bona fide commercial development agreements for actual qualifying expenditure should remain. Such payments made under BPRA investment schemes remain an essential part in securing and delivering a successful project at a time when external bank funding is in short supply.

Question 4: Assuming that the new legislation should provide a cap in relation to the amount of any developer's fee, where one is charged (that is, to allow such a fee, whilst preventing potentially excessive claims for BPRA) - do you consider that there should be consideration of the circumstances, and that, in any event, 5 per cent of the total sub-contacted costs, would provide a fair maximum amount, on which BPRA tax allowances should be allowed?

18. A restriction may be appropriate where the developer is connected with the BPRA investment scheme or its promoter.

Question 5: Would the legislative approach (as outlined at paragraph 6.8) proposed to counter the timing issue provide an effective deterrent?

19. Yes, although completion within 12 months will only enable smaller stage works to qualify where an upfront payment is made. Completion should be defined, for example, the date of the Practical Completion certificate or similar.

Question 6: Do you consider that there would remain ways in which the new legislation, proposed to clarify BPRA's policy purposes, could be exploited or circumvented? If so, please indicate how, and also how such attempts might be addressed.

20. No

Question 7: Conversely, do you consider that there are circumstances in which the proposed new legislation would give rise to outcomes inconsistent with BPRA's policy objectives? (Bearing in mind that these objectives include value for money for the Exchequer.) If so, in what circumstances and how might these situations be addressed?

21. Any new legislation must help clarify HMRC's stance to BPRA schemes and claims generally and provide investors with greater confidence and certainty so that much needed regenerative projects continue to proceed.

22. We are concerned that the proposals do not take into account that buildings may legitimately still be in partial use despite being derelict. It is important that any changes should not undermine proposals to also regenerate such properties.

Second: a targeted anti-avoidance rule (TAAR)

Question 8: Do you consider that a TAAR in relation to PBLR with a 'capital allowances connection' would be a sensible and effective deterrent to other potential forms of BPRA exploitation?

23. In our view, a TAAR would lead to further complication. BPRA is a legitimate tax incentive and deals are structured to make the most use of the available tax relief. This can include utilisation of the property business loss reliefs (PBLRs) against general income, currently excepted by s16, Finance Act 2013.

24. Any targeted anti-avoidance rule must ensure that legitimate BPRA schemes remain valid without creating uncertainty and undermining the original policy objective.

E anita.monteith@icaew.com

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APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](https://www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx))