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Capital allowances and land remediation relief
RICS guidance note, UK

1st edition (GN 111/2013)
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**Technical author:**
Steven Bone (The Capital Allowances Partnership Ltd)

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**Chair:** Andrew Smith (Laing O’Rourke)
Alpesh Patel (APC Coach Ltd)
Christopher Green (Capita Symonds Ltd)
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This is a guidance note. Where recommendations are made for specific professional tasks, these are intended to represent ‘best practice’, i.e. recommendations which in the opinion of RICS meet a high standard of professional competence.

Although members are not required to follow the recommendations contained in the note, they should take into account the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal may take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member had acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It is for each member to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this note, they should do so only for a good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice. Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel.

In addition, guidance notes are relevant to professional competence in that each member should keep themselves up to date and should have knowledge of guidance notes within a reasonable time of their coming into effect.

This guidance note is believed to reflect case law and legislation applicable at its date of publication. It is the member’s responsibility to establish if any changes in case law or legislation after the publication date have an impact on the guidance or information in this document.
RICS produces a range of standards products. These have been defined in the table below. This document is a guidance note.

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This guidance note introduces the subjects of capital allowances and land remediation relief.

**Capital allowances**

Capital allowances are a group of UK income tax and corporation tax reliefs that are available to businesses for capital expenditure. Capital expenditure creates an asset or advantage with enduring benefit and is usually recorded as a fixed asset on the balance sheet in the financial accounts. Examples are expenditure upon land, buildings and equipment.

A basic rule of UK taxation is that capital expenditure cannot be written off for tax purposes. Therefore, any depreciation shown in the financial accounts must be added back to taxable profit when the tax computation is prepared. However, instead tax relief is given via the capital allowances system. This gives a tax deduction in lieu of depreciation, under rules put in place and endorsed by successive governments. These permit tax relief for assets approved by government, at rates controlled by it. In essence, capital allowances are intended to compensate a business with tax relief for the wear and tear, or loss in value, of its fixed assets. Capital allowances are also used by government as an investment incentive to encourage businesses to spend money on assets that are desirable for policy reasons.

The principal legislation is the *Capital Allowances Act 2001* (CAA 2001), although relevant statute is to be found elsewhere, for example, in various Finance Acts. There is also an extensive body of case law dating from the end of the 19th century.

**Land remediation relief**

Land remediation relief was introduced in 2001 as an urban regeneration measure. It is a UK corporation tax relief for expenditure incurred to clean up contaminated land and buildings. It is not a type of capital allowance but has a similar effect.

The principal legislation is the *Corporation Tax Act 2009* (CTA 2009).

**General notes**

This guidance note is written for chartered surveyors who are not capital allowances or land remediation relief specialists. It therefore covers the subject in general terms only. It is not an attempt to provide specialist knowledge; neither is it any substitute for the relevant legislation, case law and published HM Revenue & Customs (HMRC) and Valuation Office Agency (VOA) practice, or more detailed texts on the subject.

Importantly, any surveyor adopting best practice should recognise that capital allowances and land remediation relief practice is tax advice, which extends beyond simply providing copies of documentation that have been produced for other purposes. This guide is no substitute for properly considered advice from a competent and experienced capital allowances or land remediation relief specialist or other tax professional. Surveyors should avoid the danger of straying into an area that is beyond the scope of their expertise and should recognise when and what type of specialist assistance might be required. A failure to use reasonable skill and care by a surveyor can result in adverse consequences for the taxpayer, including the time and cost of an unwelcome HMRC enquiry and the imposition of penalties. Surveyors should think carefully before providing capital allowances or land remediation relief advice, and seek appropriate assistance if necessary. That advice could be limited to advising the client to seek specialist assistance. It is also essential that the
surveyor’s professional indemnity insurance provides adequate cover for this type of advice.

Jurisdictions outside the UK have their own equivalent systems of relief, and the various international rules permitting tax deductions for capital expenditure are commonly referred to as tax depreciation. This guidance focuses on the UK rules. For property located outside the UK or owned by a business that is not liable to UK tax, care should be taken to determine which jurisdiction is applicable.

Guidance is given under the following headings, which map to the Assessment of Professional Competence (APC):

- General principles (Level 1 – Knowing)
- Practical application (Level 2 – Doing)
- Practical considerations (Level 3 – Doing/Advising).
Part 1: Capital allowances
1.1 Types and rates of relief

There are various types of capital allowances. They all have the same objective of permitting tax relief for capital expenditure. However, they focus on different assets and the detailed rules diverge.

The main types of capital allowances are summarised below.

1.1.1 Plant and machinery allowances

These are the most commonly encountered capital allowances. They are given for business expenditure upon plant and machinery, as defined for tax purposes.

To be entitled to claim plant and machinery allowances, a taxpayer must:

- have a qualifying activity and
- incur qualifying expenditure.

A qualifying activity is a UK taxpaying business, such as a trade (for example, making or selling things with a view to profit), property investment, or a profession or vocation. Qualifying expenditure is money spent on plant or machinery for business purposes that the taxpayer owns or is deemed to own for capital allowances purposes.

Fixtures are assets installed or fixed in or to a building or land so as to become, in property law, part of that building or land. Whether something is a fixture is a matter of real estate law, which is beyond the scope of this guidance note. However, the answer depends on considering the method and degree of annexation (broadly, how it is fixed) and the object and purpose of annexation (broadly, why it is fixed). Establishing the ownership of plant and machinery fixtures for capital allowances purposes is complicated and subject to special rules. These can create a fictional ownership that overrides property law for capital allowances purposes only.

Machinery takes its ordinary, natural meaning. However, plant has a particular meaning, defined in some circumstances by CAA 2001 and more generally by case law. Correctly identifying plant can be difficult but, in essence, it is business apparatus. This includes many fixtures within buildings. However, there is no standard list. This is because whether an asset is plant is context specific and involves carefully considering the nature of the particular business and how the asset relates to it. Physically identical assets may be plant for one business but not another.

Nevertheless, examples of plant and machinery for tax purposes can include (among others):

- sanitary appliances
- hot and cold water
- heating, ventilating and air conditioning systems
- electrical power and lighting
- lifts and escalators
- fire fighting and warning equipment
- security alarm and camera systems
- telecommunications and data installations
- moveable partitions (meeting certain conditions) and
- external solar shading.

While capital allowances are available for plant and machinery (as defined for tax) within buildings, structures or premises, they are not generally available for the building, structure or premises itself. But there are specific exceptions, such as buildings provided for testing aircraft engines and some moveable buildings. In this context the terms building, structure and premises have specific legal meanings. The layperson might recognise them as being broadly equivalent to the 'bricks and
mortar’, or a surveyor might think of them as akin to the envelope or shell. Plant and machinery allowances are also not available for expenditure to buy or alter land (except, in appropriate circumstances, where the alterations are for the purpose only of installing plant or machinery).

Plant and machinery allowances are given at various rates for different categories of plant and machinery. The tax relief arising (most commonly called ‘writing down allowances’) is generally given on a ‘reducing balance’ basis. This means that instead of writing off the same fixed amount every year, a fixed percentage of the asset’s remaining value is written off each time.

**Example**

A plant asset costs £1,000 and may be written off for tax at 18 per cent a year reducing balance. In the first year £180 may be written off (that is, £1,000 x 18 per cent). And £820 is carried forward to the second year (that is, the £1,000 cost less the £180 written off). In the second year £147.60 may be written off (that is, the remaining balance of £820 x 18 per cent) and £672.40 is carried forward to the third year (that is, the £820 balance brought forward less the £147.60 written off). And so on.

The rates of relief given change from time to time, but at the time of writing they were as follows:

- 8 per cent a year reducing balance – special rate plant and machinery:
  - Integral features of buildings and structures: electrical systems including lighting; cold water systems; hot water and heating systems; mechanical ventilation and air conditioning systems; lifts, escalators and moving walkways and external solar shading
  - Long-life assets: plant and machinery with an expected useful economic life, when new, of at least 25 years
  - Thermal insulation of buildings: adding thermal insulation to existing buildings (to prevent the loss of heat not cold)
  - Solar panels

- 18 per cent a year reducing balance – main pool plant and machinery:
  - Plant and machinery generally: the default rate of relief that applies unless another rate overrides it

- Various rates – short-life assets:
  - Plant and machinery that might be owned by a business for less than eight years: the taxpayer can elect to treat it as a short-life asset. If the plant or machinery is sold or scrapped before the eighth anniversary of the chargeable period when it was purchased, relief is given at that time for any expenditure not yet written off. Short-life asset treatment is not available for integral features, long-life assets or plant and machinery owned by a landlord

- 100 per cent – annual investment allowance (AIA):
  - Plant and machinery generally (with some defined exceptions): the first, but not necessarily earliest, tranche of expenditure on plant and machinery taken into account when the tax computation is prepared for a chargeable period. The maximum AIA depends on when the expenditure was incurred. In recent years this has been £25,000, £50,000, £100,000 or £250,000. There are complicated rules to allocate the AIA amount over chargeable periods when the amount changes

- 100 per cent – enhanced capital allowances (a type of first-year allowance):
  - New (i.e. not used or second-hand) energy-saving and environmentally beneficial (water-saving and quality-improving) plant and machinery specified by Treasury Order
  - New plant and machinery expenditure in designated assisted areas in enterprise zones

**1.1.2 Business premises renovation allowances**

These capital allowances are an urban regeneration measure, given for expenditure to
renovate business premises, with the intention of bringing those premises back into use.

The qualifying expenditure may be written off for tax in full at the time it is incurred. Therefore, a 100 per cent allowance is available.

In contrast to plant and machinery allowances, tax relief is given for all capital expenditure on, or in connection with, the conversion, renovation or repairs of qualifying buildings into qualifying business premises. However, allowances are not given for:

- the purchase of land or rights over land
- extensions (except to provide access)
- developing land beside a qualifying building
- providing plant and machinery chattels (a chattel is a loose, moveable asset; or put another way, an asset that is not a fixture – see 1.1.1)
- demolishing existing buildings or
- property previously used for specified business sectors including, among others, fishery, shipbuilding and the coal industry.

A qualifying building is a building that:

- is situated in a designated disadvantaged area
- was unused for at least a year previously
- has last been used for business purposes or as an office, or offices and
- has not last been used as, or as part of, a dwelling.

A qualifying business premises is a qualifying building used for business purposes or as an office, and which is not a dwelling or part of one.

1.1.3 Flat conversion allowances

These are another urban regeneration measure. They are given for expenditure incurred to convert parts of business premises into residential flats (typically, flats above shops). Flat conversion allowances are abolished for expenditure incurred after April 2013.

The qualifying expenditure may be written off for tax in full at the time it is incurred. Therefore, a 100 per cent allowance is available.

Unlike plant and machinery allowances, tax relief is given for all capital expenditure on, or in connection with, the conversion, renovation or repairs of qualifying buildings into qualifying flats. However, allowances are not given for:

- the purchase of land or rights over land
- extensions (except to provide access)
- developing land beside a qualifying building or
- providing furnishings or chattels.

A qualifying building is a building that:

- was built before 1 January 1980
- has no more than four storeys above the ground floor (not counting the attic unless it has been used as a dwelling)
- has all or most of the ground floor authorised for specified business planning use classes
- was intended when it was built that the upper storeys were to be used for dwelling and
- has been unused, or used only for storage, for at least a year previously.

A qualifying flat is a residential flat in a qualifying building that:

- is suitable for letting as a dwelling and held for short-term letting
- has its own entrance separate from the business premises
- has four rooms or less (excluding kitchens, bathrooms, closets, cloakrooms or hallways smaller than 5m2 in area)
- is not a high-value flat (by reference to a table of notional furnished weekly rents) and
- is not let to someone connected to the taxpayer.

1.1.4 Research and development allowances

These allowances are aimed at encouraging business investment in research and development.

The qualifying expenditure may be written off for tax in full at the time it is incurred. Therefore, a 100 per cent allowance is available.
Unlike plant and machinery allowances, tax relief is given for capital expenditure on buildings as well as equipment. However, allowances are not given for:

- the purchase of land or rights over land
- the purchase of rights in, or arising out of, research and development or
- expenditure on a dwelling (unless it is no more than one-quarter of the cost of the whole building of which it is part).

The relief is available where a taxpayer carrying on a trade (for example, making or selling things with a view to a profit) incurs capital expenditure on research and development undertaken directly by him or her or subcontracted to someone else. It is not available to taxpayers with other business types, such as property investment or a profession.

Research and development has the meaning given by generally accepted accounting practice. In practice, this follows published government guidelines. These define research and development as taking place when a project seeks to achieve an advance in science or technology. The activities that directly contribute to achieving this advance through the resolution of scientific or technological uncertainty are research and development.

1.1.5 Industrial buildings allowances

Industrial buildings allowances were introduced after the Second World War. The objective was to encourage investment in manufacturing premises and the like. Enterprise zone allowances from the 1980s and 1990s were a special type of industrial buildings allowances for a small number of specially designated areas.

Industrial buildings allowances were abolished from April 2011. Although they have been abolished, the buyer of a second-hand property may find that their claim for plant and machinery allowances is nil or restricted because of industrial buildings allowances claimed by a previous owner.

In recent years the standard rate of relief was 4 per cent a year straight-line. Straight-line relief means that the same fixed amount is written-off each year.

Example

If the qualifying expenditure was £1,000,000 then £40,000 could be written off each year (that is, £1,000,000 x 4 per cent).

Therefore, an industrial building had a standard 25-year tax life at the end of which all tax relief was exhausted. However, in the four years prior to abolition the rate reduced on a transitional basis by one-quarter each year straight-line. For old-style enterprise zones a 100 per cent allowance was available.

In contrast to plant and machinery allowances, tax relief was given for capital expenditure on buildings and structures. However, allowances were not given for:

- the purchase of land or rights over land or
- buildings or structures in use as, or as part of, a dwelling-house, a retail shop, a showroom, an office or a hotel (subject to special rules for certain qualifying hotels).

Whether a building qualified for industrial buildings allowances depended on its use. Industrial buildings or structures were in use for one of a number of business activities, including, among others, manufacturing, processing, and storing goods and materials for manufacturing or processing purposes. Also included were utility undertakings (for example, electricity, water and sewerage) as well as transport and highway undertakings. Hotels meeting certain conditions were also deemed industrial buildings.

1.1.6 Agricultural buildings allowances

Agricultural buildings allowances were introduced at the same time as industrial buildings allowances. The aim was to incentivise investment in agricultural production assets.

Agricultural buildings allowances were abolished from April 2011. Although they have been abolished, the buyer of a second-hand property may find that their claim for plant and machinery allowances is nil because of agricultural buildings allowances claimed by a previous owner.
In recent years the rate of relief was 4 per cent a year straight-line. Therefore, an agricultural building had a standard 25-year tax life at the end of which all tax relief was exhausted. However, in the four years prior to abolition the rate reduced on a transitional basis by one-quarter each year straight-line.

In contrast to plant and machinery allowances, tax relief was given for capital expenditure on agricultural buildings, fences or other works. However, allowances were not given for the purchase of land or rights over land. Agricultural buildings were defined very widely to include farm houses or cottages, farm buildings such as barns or sheds, fences and other works such as drainage, water supply, walls, silos and farm roads.

To qualify for agricultural buildings allowances the expenditure had to have been incurred by a taxpayer holding the freehold or leasehold interest in UK land for the purposes of husbandry. Husbandry meant that the business depended to a material extent on the fruits, natural or commercial, of that land.

1.2 Business types that can benefit

Broadly speaking, capital allowances are available to property owner-occupiers and investors who are within the charge to UK income or corporation tax and are sufficiently profitable to have recently paid, or be expected to pay, income or corporation tax. It is normally of no consequence whether the business form is a sole trader, partnership or company, etc.

Capital allowances are not available for property built or bought with the intention of sale (that is, trading stock where the expenditure is recorded on trading account as a current asset on the balance sheet). Under tax law a property trader’s stock is revenue expenditure, and tax relief becomes available for money spent, as an ordinary tax-deductible business expense, when the property is sold. However, there are limited exceptions to this general rule. For example, a property trader may still be able to claim allowances for expenditure on its own facilities, such as a head office or depot. In the right circumstances industrial buildings allowances could also sometimes be claimed for expenditure incurred by a property developer or trader. This was a rare exception to the principle that capital allowances are only available for capital expenditure.

1.3 Property types

Capital allowances are available for fixtures and chattels in a wide range of property types. As long as the taxpayer is liable to UK tax, the property can be located outside the UK.

Virtually all business premises contain plant and machinery fixtures. Particularly plant-rich property types include, among others:

- hospitality and leisure: public houses, restaurants and hotels, etc.
- healthcare: care homes, private hospitals, doctors and dentists’ surgeries, etc.
- motor industry: motor dealers and petrol stations and
- offices.

Plant and machinery allowances are generally not available to landlords of residential property (that is, taxpayers with a UK or overseas property business, or who lease plant outside another qualifying activity). This is because CAA 2001 dictates that plant and machinery provided for use in a dwelling-house cannot be qualifying expenditure. However, other tax reliefs may be available instead. Some places where people live are not considered to be dwelling-houses for tax purposes and therefore capital allowances are available. Common examples include care homes, traditional student halls of residence and furnished holiday lettings (meeting certain conditions). Also, a block of flats is not a dwelling-house (although the individual flats usually are), so capital allowances may be available for the common parts of such premises.

Other targeted reliefs are also available for specific circumstances already mentioned in paragraphs 1.1.1 to 1.1.6. These include:
- energy-saving and environmentally beneficial (water-saving and quality-improving) plant and machinery – enhanced capital allowances
- renovating business premises in designated disadvantaged areas – business premises renovation allowances
- converting parts of business premises into residential flats – flat conversion allowances (abolished from April 2013)
- research and development facilities and equipment – research and development allowances
- industrial buildings and structures – industrial buildings allowances (abolished from April 2011)
- agricultural buildings, fences and other works – agricultural buildings allowances (abolished from April 2011).

1.4 Transaction types

Capital allowances are available for expenditure on:

- new assets (including new builds, extensions, refurbishments and other additions) and
- the purchase of second-hand property.

To satisfy the ownership condition and claim plant and machinery allowances for construction additions (that is, plant and machinery fixtures comprising part of new build, extension or refurbishment projects, etc.) the taxpayer must have an interest in the relevant land at the time the plant and machinery becomes a fixture, or have contributed towards the cost of the asset for business purposes (see paragraph 2.2).

For the purchase of second-hand property, plant and machinery allowances may be available for freehold acquisitions and the granting or assignment of a lease (see paragraph 2.3).
2.1 Entitlement to claim capital allowances generally

The most fundamental issue when providing capital allowances advice is to establish the business’ entitlement to claim tax relief (that is, whether it is legally permitted to claim any capital allowances).

Each type of capital allowance has its own detailed rules to establish a business’ entitlement to claim the relief (see paragraph 1.1). These are complicated and change from time to time, so it is advisable to review and confirm these in the context of the taxpayer’s business and the expenditure in question.

Capital allowances are an income tax and corporation tax relief, so, to benefit directly, the property owner should be within the charge to UK tax (that is, not be a non-taxpayer such as a charity, public body or self-invested personal pension). Although capital allowances may be disclaimed (that is, deliberately deferred), in the vast majority of circumstances they will be used to reduce current period taxable profits. Therefore, to benefit from relief a business should also be sufficiently profitable to have recently paid, or be expected to pay soon, an income tax or corporation tax bill. Alternatively, claiming capital allowances can create or increase a taxable loss. Precisely how and when taxable losses may be used depends on the business type. The main distinctions are between businesses subject to income tax or corporation tax, and between trading businesses (for example, those making or selling things with a view to profit) and property businesses (that is, investors). It is also possible for companies (not other forms of businesses) to surrender losses arising from claiming enhanced capital allowances for energy-saving and environmentally beneficial assets, in return for a cash payment from the government (broadly equal to 19 per cent of the loss surrendered, subject to upper limits).

However, some property owners who are not within the charge to income tax or corporation tax can nevertheless benefit indirectly from capital allowances. For example, to protect or enhance the value of its property investment, a pension fund or charity may wish to establish a value for plant and machinery fixtures so that a future taxpaying buyer can claim allowances on those fixtures. Also, real estate investment trusts (REITs) are property investment vehicles that are exempt from corporation tax on their rental income, and capital gains tax on their property investment activities, but must distribute at least 90 per cent of investment profits to shareholders. But a REIT’s distributable profits are calculated in accordance with UK tax rules so, even though it does not pay tax on those activities, it can benefit significantly from claiming so-called ‘shadow’ capital allowances. These reduce the profits that must be distributed to shareholders. This retains cash that can be reinvested in the business.

The most fundamental tax question is whether income or expenditure is capital or revenue. Establishing this is a matter of tax law, which is not determined by the accounting treatment followed. Capital allowances are given to businesses for capital expenditure. A building contractor’s or trading property developer’s outgoings are usually revenue for tax purposes. Therefore, with rare exceptions, capital allowances are not available for their expenditure, although the expenditure can normally be written off for tax when it is incurred, or when the finished development is sold.

Repairs and maintenance building works are often also revenue expenditure for tax purposes. Capital allowances are not available for such expenditure, which may instead be
written off for tax as an ordinary operating expense of the business. However, in HMRC’s view, when repair and maintenance work is capitalised (that is, the expenditure is recorded in the financial accounts as a fixed asset on the balance sheet) any tax relief only becomes available when depreciation is charged to the profit and loss account. Put another way, the tax deduction follows the depreciation rate in the accounts. Capitalised revenue expenditure is sometimes described as deferred revenue. Many property investors do not depreciate their investment property. In such cases, any tax relief for capitalised repair and maintenance work is likely to be significantly delayed until the sale of the property, or a permanent revaluation below original cost. For tax reasons it may therefore be advisable to expense (that is, charge) repairs and maintenance expenditure through the profit and loss account when it is incurred. For tax-efficient treatment to be readily adopted, it may be advisable for surveyors to consider identifying potential revenue expenditure at an early stage (for example, during cost planning).

Capital allowances must be claimed in a tax return. For corporation tax purposes, the basic rule (subject to specific later exceptions) is that a claim may be made or amended within two years from the end of the accounting period when the expenditure was incurred. For income tax purposes the deadline is one year after the 31 January following the year of assessment. The year of assessment (also known as a tax year or fiscal year) is the 12-month period ending on 5 April. However, except where rules brought in by the Finance Act 2012 apply (see paragraph 2.3), nothing obliges a taxpayer to pool qualifying expenditure (that is, notify it to HMRC) and claim allowances in the chargeable period in which the expenditure is incurred. Therefore, a business is free to pool the expenditure and claim allowances in a later period, as long as the qualifying assets are still owned and the normal time limits (outlined above) are followed for that later period.

A surveyor’s general objectives would normally be to legitimately:

- identify as much expenditure as possible that qualifies for capital allowances
- allocate the maximum qualifying expenditure to the capital allowances types that give the fastest tax relief (sometimes a choice is available) and
- aim for the capital allowances claim to enable the business to meet its self-assessment obligation to submit a correct and complete tax return and retain adequate records to support this.

### 2.2 Claims for construction expenditure

Providing that the client is entitled to claim capital allowances, relief is available for construction additions in the widest sense, including new builds, extensions and refurbishments.

For construction additions, fixtures belong to a business for plant and machinery allowances purposes as long as that taxpayer has an interest in the relevant land at the time the plant and machinery becomes a fixture (that is, when a chattel is attached to the land or building). The relevant land is the land or building that the fixture is attached to. An interest in land is either:

- the freehold or its Scottish equivalent, or an agreement to acquire this
- a lease or its Scottish equivalent, or an agreement to acquire one
- an easement or servitude, or an agreement to acquire one or
- a licence to occupy land (which in HMRC’s view must be exclusive).

If expenditure is jointly incurred by two or more taxpayers with different levels of interests then the fixture is treated as belonging only to the party with the lowest interest. For example, if a landlord and tenant each pay towards the cost of an air conditioning asset, then the asset will be deemed to belong only to the tenant for capital allowances purposes. However, the landlord would usually be able to claim capital allowances for its expenditure under a different statutory mechanism that applies to contributions made towards someone else’s expenditure.
It is advisable that capital allowances claims for construction works are based on detailed documentary evidence, as far as practicable. The information available and appropriate will depend on the procurement route adopted. However, it may typically include, but not necessarily be limited to, the following documents:

- contract sum (for example, contract sum analyses, priced schedules of works, bills of quantities or accepted supplier quotations)
- final account, including variations
- payment certificates
- site plan and architectural drawings
- performance criteria and specifications
- financial statements showing expenditure recorded in the accounts and invoices.

Capital allowances are claimed upon actual expenditure incurred to carry out the construction works. This may include main contract and subcontracted works, plus potentially works undertaken directly or in-house by the claimant. It can prove valuable to verify the total expenditure by checking the business’ financial accounts and reconciling the cost documentation and capital allowances analysis to this.

Nevertheless, it is rare that construction documentation prepared for cost management of the construction works is sufficiently detailed for capital allowances purposes. Therefore, it is usual for this information to be supplemented with a survey and estimates of costs. It is advisable to undertake the survey in sufficient detail to identify the plant and machinery, bearing in mind that in HMRC’s view the capital allowances plant and machinery fixtures rules work on an individual asset-by-asset basis. It can prove valuable to retain adequate records, including measurements, written notes and photographs, as appropriate. Estimates of cost are normally acceptable to HMRC and the VOA as long as they:

- are reasonable
- apply established estimating techniques and
- are ideally based on independent cost data, such as that published by the Building Cost Information Service (BCIS) and building price books.

Capital allowances are given for expenditure on the provision of plant and machinery. This includes transport and installation costs, as well as an appropriate allocation of related on-costs, such as preliminaries and professional fees. It is advisable to include these costs as appropriate.

Sometimes third-party funding is received towards the cost of construction works (for example, a contribution or grant). Capital allowances are based on the expenditure actually incurred by a business. Therefore, where money has been received the facts need to be considered and, if necessary, the receipt deducted from the recipient’s qualifying expenditure.

To claim accelerated enhanced capital allowances for energy-saving or environmentally beneficial plant and machinery, the asset must be of a description specified by Treasury Order. In most cases this means that the equipment must be listed on the government’s Energy Technology List or Water Technology List. However, some products, called non-listed products, do not appear on the Energy Technology List but do still qualify for accelerated tax relief. At the time of writing these are:

- lighting
- pipework insulation
- combined heat and power and
- component-based automatic monitoring and targeting equipment.

The process for claiming enhanced capital allowances for non-listed products depends on the particular technology type but, broadly, depends on meeting specified performance criteria. The products that qualify for enhanced capital allowances can, and often do change, with technologies and products being added or excluded from the scheme. For enhanced capital allowances to be claimed it is advisable at an early stage to ensure that qualifying assets are specified. It is also important to keep evidence to prove that the equipment
2.3 Claims for purchases of second-hand property

Providing the client is entitled to claim capital allowances, relief is available for the purchase of second-hand property. This includes capital expenditure on freehold and leasehold property.

It is prudent to establish the ownership of plant and machinery fixtures for capital allowances purposes as part of an entitlement review process. In the case of second-hand purchases for plant and machinery allowances purposes, fixtures belong to the freehold owner unless immediately after the transaction another person has a prior right. This means that somebody else has previously incurred capital expenditure on the same fixtures and is already claiming capital allowances on them. The most common example is a tenant’s trade fixtures. The rules regarding leasehold interests are more complicated. Capital allowances may only be claimed if the capital allowances are associated with that particular leasehold interest. This would either be because the fixtures were installed by a previous holder of that lease, or ownership for capital allowances purposes was passed to the lessee by a tax election when the lease was granted, or the lessor was not entitled to claim capital allowances and the fixtures had not been used for a qualifying activity by the lessor or anyone connected to it. Sometimes statute gives businesses a choice of tax treatment and requires HMRC to be given certain information. A tax election is a formal written notification to HMRC of the tax treatment adopted.

It is advisable to base capital allowances claims for the purchase of second-hand property on relevant documentary evidence. The information available and appropriate will depend on the particular transaction. However, it may typically include, but not necessarily be limited to, the following documents:

- sale and purchase agreement, or lease agreement
- completion statement
- pre-contract enquiry questions and responses relating to capital allowances
- site plan and architectural drawings
- financial statements showing expenditure recorded in the accounts
- marketing agent’s sales particulars
- valuation report
- building survey report
- title deeds providing evidence of title to land
- licences for alterations and
- building specifications.

For the purchase of second-hand property an allocation in the sale and purchase agreement is not binding for capital allowances purposes. By default a buyer’s capital allowances claim is based on a just and reasonable apportionment of the purchase price. This is a specialist valuation for tax purposes that apportions the purchase price to reflect the value that each constituent part of the property makes to the value of the whole property. The RICS Valuation – Professional Standards (Red Book) is not of mandatory application for this purpose.

The apportionment should be calculated based on the total expenditure incurred to buy the property. It may be helpful to verify this by checking documentation such as the transaction completion statement or buyer’s financial accounts or both.

Statute does not specify a particular method of preparing a just and reasonable apportionment. However, the VOA-endorsed approach is known as the formula approach and is normally used. A surveyor is free to depart from the formula approach, but this is used in the vast majority of circumstances and a surveyor would need to have strong reasons for using an alternative basis. An apportionment using the formula approach involves undertaking a survey to identify the plant and machinery and...
then calculating a bare site value and reconstruction cost estimate for tax purposes. It is helpful for the survey to be undertaken in sufficient detail to identify the plant and machinery and for adequate records to be retained. These could include measurements, written notes and photographs, as appropriate. It is advisable that replacement cost estimates are reasonable, apply established estimating techniques, and are ideally based on independent cost data, such as that published by BCIS or building price books.

Alternatively, a buyer’s or lessee’s capital allowances claim for plant and machinery fixtures may be determined by the seller and buyer agreeing a CAA 2001 section 198 joint election (or its section 199 equivalent for leases). For any fixtures that are the subject matter of an election, the election overrides an apportionment. There are detailed statutory rules that must be followed for a section 198 election to be valid, including a two-year time limit from the completion date of the transaction for it to be submitted to HMRC. Whether or not an election is in a buyer’s or lessee’s interests is not straightforward, and elections are often best avoided by buyers. Even if an election is agreed in respect of assets on which the seller has claimed capital allowances, it is normal for the capital allowances value of other plant and machinery fixtures to be established by means of an apportionment.

Additionally, statute contains complicated anti-avoidance rules relating to plant and machinery fixtures. Among other things, these prevent different taxpayers claiming capital allowances on the same fixtures simultaneously, and prevent the value of fixtures being inflated when fixtures change hands. For fixtures on which a seller has previously claimed plant and machinery capital allowances, the rules cap a buyer’s claim at the qualifying expenditure originally claimed by the seller. It is important that these rules are considered and applied where relevant.

For expenditure incurred (that is, sale and purchase transactions) before April 2012 capital allowances can be claimed in any later tax period as long as the plant and machinery fixtures are still owned by the taxpayer in that later period (that is, the plant has not been stripped out or the property sold by then).

After April 2012 the Finance Act 2012 introduced new technical requirements to claim plant and machinery allowances for fixtures. These are the fixed value requirement or disposal value statement requirement, and the pooling requirement. These rules are complicated and it is vital that they are considered and applied where relevant otherwise neither the buyer nor any future owner may ever be able to claim capital allowances on affected fixtures, meaning some expenditure on fixtures may never benefit from any tax relief over those fixtures’ lives. This could also damage the market price of affected properties.

The fixed value requirement and disposal value statement requirement apply for expenditure incurred from April 2012. They only apply to plant and machinery fixtures on which the seller (or an earlier owner since April 2012) has claimed capital allowances. These requirements oblige the buyer to take steps to establish the value of those fixtures for capital allowances purposes within two years of the transaction completion date. In the vast majority of normal circumstances the fixed value requirement will apply. This requires a section 198 (or section 199) election, or an application to the Tax Chamber of the First-tier Tribunal for an independent determination. A tribunal application can be made unilaterally by either the seller or buyer, although the other taxpayer concerned is entitled to be joined as a party to the proceedings. Alternatively, certain written statements may be used where property was bought from someone who was not entitled to claim allowances (such as a charity) but did not comply with these rules at the time. More rarely, the disposal value statement requirement may apply in circumstances such as when property is purchased from someone who previously ended their business. Fixtures on which capital allowances have not been claimed previously are not subject to these requirements and should be valued for capital allowances purposes by just and reasonable apportionment.
The pooling requirement applies from April 2014. Where the seller was entitled to claim capital allowances, irrespective of whether it actually did, it must pool the expenditure (that is, notify it to HMRC in a tax return) before the buyer may claim allowances. Within the normal self-assessment time limits (see paragraph 2.1), the expenditure must be pooled in a chargeable period beginning on or before the day when the building was sold or the seller claimed a first-year allowance (see 1.1.1) on it, or on any part of it. Because the seller is, in effect, forced to claim allowances before the buyer may claim, then the fixed value requirement and disposal value statement requirement also apply. This necessitates a section 198 (or section 199) election, or a tribunal application to determine the fixtures’ value.

The Finance Act 2012 changes do not apply to assets on which capital allowances could not have been claimed by the relevant prior owner, for example, because at the time the expenditure was incurred, they would not have been considered to be plant in that owner’s hands.

2.4 Regular update and review of legislation, case law and HMRC practice

Capital allowances law and practice, such as rates of relief, tribunal and court decisions, and HMRC interpretations, often change. It is advisable to remain aware of this and ensure that advice is based on the rules and practice in force at the appropriate time.

2.5 HMRC and VOA manuals

HMRC and the VOA publish manuals and other explanatory material, but these do not have the force of law. While they provide useful guidance and outline the government’s practice and official view on a particular matter, they should be treated with caution. A tribunal or court is obliged to apply the law, even where this conflicts with HMRC guidance.

A properly informed and advised taxpayer is free to adopt a different view of the law to the published view of HMRC or the VOA. However, to protect against a subsequent discovery assessment it may be advisable for the tax return or accompanying documents to indicate that a different view has been adopted. Discovery gives HMRC powers to re-open a seemingly agreed tax return up to 20 years after HMRC’s normal time limit, for enquiring into a tax return, has passed.
This section outlines practical considerations that need to be taken into account when advising on capital allowances. It is important that surveyors do not give advice that is beyond the scope of their knowledge and experience, particularly in the area of taxation.

3.1 Construction expenditure

A business subject to income tax (for example, a sole trader or partnership) has ten months after the end of the chargeable period when the expenditure was incurred to submit its tax return, and a further year to make or amend a capital allowances claim. A company has a year to submit its return, and another year to make or amend a capital allowances claim. Therefore, there can routinely be a considerable delay between expenditure being incurred and the relevant tax return being prepared and submitted to HMRC. However, when construction works are being considered it can be helpful to consider capital allowances as early as possible. This provides the opportunity to review the proposed transaction structure to ensure that capital allowances will be available to the party that wishes to claim them.

While design will normally be driven by commercial or operational needs, rather than taxation, sometimes there is a choice between design alternatives that have different taxation outcomes. Early advice allows the design and documentation to be optimised for tax purposes by choosing solutions that qualify for tax relief, or benefit from accelerated relief. For example, specifying energy-saving or environmentally beneficial plant and machinery qualifying for enhanced capital allowances will accelerate the tax relief compared to non-green assets. This is because relief is available at 100 per cent instead of at 8 per cent a year reducing balance – see paragraph 1.1.1 and 2.2. In most cases unless assets that are listed on the government’s Energy Technology List or Water Technology List are specified and installed then no enhanced capital allowances will be available. If the issue is ignored until the tax return is prepared then the opportunity will be lost.

Appropriate documentation may be produced to support and assist preparation of the capital allowances claim, for example, by confirming the purpose of particular expenditure, or describing it in a way that accurately presents its true features for taxation purposes. Sufficiently detailed cost information may also be made available to efficiently support a maximised capital allowances claim.

An alternative to preparing a bespoke detailed capital allowances claim is to use a systems-based approach (for example, pro-forma or information technology solution) to capture the qualifying expenditure in the right format in advance. This can be particularly suitable when a business carries out regular programmes of work on a portfolio of similar properties. It is advisable to ensure that the system captures and appropriately categorises all expenditure. It is also prudent to include training and support for the people who will input the information into the system, as well as a review and reconciliation mechanism (for example, at the end of the project or chargeable period). Also, systems can soon become outdated, so it can prove valuable to periodically check procedures to ensure that they continue to be based on up-to-date law and practice.

For large programmes of regular, similar work another option is to base the capital allowances claim on a detailed analysis of expenditure in a sample of those properties. If
this approach is used, surveyors are recommended to follow HMRC guidelines on sampling as a basis of claim, in particular, to ensure that the result is statistically valid to HMRC’s satisfaction.

3.2 Second-hand purchases

Adequate due diligence is necessary to apply the anti-avoidance rules relating to plant and machinery fixtures. This is usually dealt with by the seller completing the Commercial Property Standard Enquiries – General pre-contract enquiries for all commercial property transactions form (CPSE.1). This is available online from Practical Law Company. Some conveyancing advisers use their own in-house versions. It is helpful if such due diligence is completed thoroughly, and sensible answers are necessary. Nevertheless, the availability of detailed capital allowances information is sometimes limited. Take particular care in such circumstances. Sometimes HMRC may accept estimated figures to apply the restrictions required by statute. In such cases it is advisable that estimates are reasonable, apply established estimating techniques, and are ideally based on independent cost data, such as that published by BCIS or building price books.

Different capital allowances rules apply to plant and machinery fixtures and chattels (that is, loose plant and machinery). These assets should be identified separately. Whether assets are chattels or fixtures is a matter of property law and surveyors should be careful not to give advice that is beyond the scope of their expertise.

During second-hand property transactions the availability of CAA 2001 section 198 (or section 199) elections means that capital allowances can become a commercial matter, which is the subject of negotiation. In such circumstances the seller’s and buyer’s interests are usually opposed. The seller may wish to retain some, or all, of the capital allowances (despite selling the assets) by agreeing a low election amount. In this case, it is generally prudent for the seller to signal this intention as early as possible (for example, in the sales particulars, or heads of terms, or both). In contrast, unless the proposed election amount broadly reflects the seller’s original expenditure qualifying for capital allowances, a buyer’s interests are often likely to be best served by avoiding an election entirely and instead seeking a tribunal determination. Elections are subject to numerous technical, tactical and practical considerations and should be advised on with care. Also, when advising during transaction negotiations about capital allowances, effective negotiation skills are important. The process of negotiation is beyond the scope of this guidance note.

3.3 General

Capital allowances are income tax and corporation tax reliefs and can interact with other taxes. Be mindful of other areas of tax that may require consideration. This can be complex. Potential interactions include value added tax (VAT), capital gains tax (CGT) and stamp duty land tax (SDLT).

HMRC has wide-ranging powers. It may check any tax return (that is, open an enquiry or so-called investigation). This includes asking questions, reviewing documentation and inspecting premises to establish whether the tax return is correct and complete. Where in HMRC’s view this self-assessment obligation has not been met, it can assess the tax that it considers should have been due and charge interest and penalties for inaccuracies. Returns are selected for enquiry on a random basis. They may also be selected, for example, according to risk, or where significant tax is at stake, or where HMRC suspects that something might be wrong. Ordinarily HMRC can query a capital allowances claim within 12 months of the tax return due filing date. However, where there has been inadequate disclosure, or careless or deliberate conduct by the business or someone acting on its behalf (such as a surveyor) this can be extended until up to 20 years after the end of the tax period.

A business also has a self-assessment obligation to keep records to enable it to submit a correct and complete tax return. For most income tax purposes the general rule is
that records must be retained until the fifth anniversary of the 31 January next following the year of assessment. For corporation tax purposes the equivalent timeframe is six years from the end of the relevant accounting period. Therefore it is advisable to retain a thorough audit trail to reconcile the capital allowances claim to the original documentation or estimating sources used to prepare the claim.

HMRC routinely enquires into capital allowances claims. When giving capital allowances advice, it is worth surveyors being mindful of taxpayers’ self-assessment obligations and HMRC’s enquiry powers, and ensuring that any advice given, disclosure to HMRC and the surveyor’s working practices (such as document retention) are appropriate.

When HMRC opens an enquiry into a capital allowances claim, correspondence and meetings may be necessary to agree the claim with HMRC and the VOA. Negotiated concessions may be needed to reach a settlement, and interest and penalties may be considered. Dealing with HMRC enquiries to robustly serve a business’ interests involves good negotiation skills and a sound knowledge of taxpayer’s rights and HMRC’s powers. The process of negotiation, taxpayer’s rights, and HMRC’s powers are beyond the scope of this guidance note.

Fundamental issues to consider are whether a surveyor has the ability to deal with capital allowances, and the appropriate professional indemnity insurance cover. If advice is given then a court will take the view that the individual or organisation giving the advice was holding itself up as having the requisite knowledge. A court will not apply a lower standard to a surveyor who provides advice on capital allowances because they are not a tax professional. Where a person or an organisation holds themselves up as having knowledge in a particular area, then the court will apply the standard of a reasonably competent person appropriately qualified for such advice.
Part 2: Land remediation relief
4.1 Finance Act 2001 rules

The Finance Act 2001 (FA 2001) introduced land remediation relief as an urban regeneration measure to encourage bringing brownfield sites back into use. The original rules applied to expenditure incurred between 11 May 2001 and 31 March 2009 inclusive.

The relief is available for expenditure incurred by companies only (not other forms of businesses) to clean up land and buildings that were acquired from a third party in a contaminated state. A tax deduction is available equal to 150 per cent of the expenditure incurred. If that deduction results in a tax loss the company may surrender the loss and instead claim a tax credit, which can be repaid to it, equal to 16 per cent of the land remediation loss.

Land remediation relief is available for revenue and capital expenditure. Revenue expenditure is business operating expenses that are normally charged to the profit and loss account. They include a trading property developer’s expenditure, recorded on the balance sheet as a current asset, for which tax relief becomes available at the point of sale. Capital expenditure creates an asset or advantage with enduring benefit and is usually recorded on the balance sheet as a fixed asset. To claim land remediation relief for capital expenditure it is necessary to deem the expenditure to be revenue* by election in writing to HMRC within two years of the end of the accounting period when the expenditure was incurred. The time limit for claiming a tax deduction for true revenue expenditure is also two years after the end of the accounting period for which the claim is made. (*The reason is that land remediation relief is only given for revenue expenditure. The election means that the capital expenditure is treated as revenue expenditure for tax purposes and so qualifies for land remediation relief, even though its true nature is capital. Therefore, land remediation relief can be claimed for genuine revenue expenditure and deemed revenue expenditure, i.e. capital expenditure subject to an election.)

The remediation work may be undertaken directly by the company or on its behalf.

Expenditure qualifies for the relief if it is on employee costs, materials or payments to subcontractors.

For the land or building to be classified as contaminated, this required the presence of ‘substances’ in, on or under the land that:

- caused, or could possibly cause, harm (to the health of living organisms, interference with ecological systems, offence to human senses, or damage to property) or
- polluted, or were likely to pollute, controlled waters (groundwater, streams, rivers and coastal waters).

Works that qualified included taking any steps to prevent, minimise, remedy or mitigate the effects of any harm or water pollution, for example, removal, containment or decontamination. This included preparatory activity to assess the condition of the land, building or water, unless the remediation work was not carried out.

Where work was subcontracted to a third party then the whole of the payment was treated as qualifying for land remediation relief. Where work was subcontracted to a connected party then the payment only qualified if, in accordance with generally accepted accounting practice, the subcontractor accounted for all of the payment and expenditure when calculating its profit or loss for an accounting period.
ending within 12 months after the accounting period when the contracting company incurred the expenditure.

4.2 Corporation Tax Act 2009 rules – general

Land remediation relief was rewritten and amended by the Corporation Tax Act 2009 (CTA 2009). The revised rules apply to expenditure incurred from 1 April 2009.

The CTA 2009 rules largely reflect those of FA 2001 but differ in some key respects.

The claimant must acquire, or have acquired, a ‘major interest’ in land in the UK for the purpose of a UK property business (that is, property investment) or trade (for example, making or selling things with a view to profit). A major interest is the freehold (or its Scottish equivalent) or a lease of at least seven years, or a remaining term of at least seven years where a lease is assigned. It includes buildings upon the land.

The meaning of contaminants was widened from ‘substances’ to ‘something’ (see paragraph 4.6) in, on or under the land that causes, or results in a serious possibility of, relevant harm.

Relevant harm means:

- death of living organisms or significant injury or damage to living organisms
- significant pollution of controlled waters (groundwater, streams, rivers and coastal waters)
- a significant adverse impact on the ecosystem or
- structural or other significant damage to buildings or other structures or interference with buildings or other structures that significantly compromises their use.

It also became necessary for the land to have become contaminated as a result of industrial activity. Industrial activity includes, but is not limited to:

- mining and quarrying
- manufacturing
- supply of electricity, gas and water and construction.

This does not mean that the site must have been in use for an industrial activity. It simply means that the contamination must be present as a result of an industrial activity (such as the construction of the building), even where the premises was used for some other activity.

Contamination resulting from the presence of living organisms or decaying matter deriving from them (except Japanese knotweed) was also excluded.

Where work is subcontracted to a third party then the whole of the payment is treated as qualifying for land remediation relief. Where work is subcontracted to a connected party then the payment only qualifies if the contracting company has actually paid the subcontractor and, in accordance with generally accepted accounting practice, the subcontractor accounted for all of the payment and expenditure when calculating its profit or loss for an accounting period ending within 12 months after the accounting period when the contracting company incurred the expenditure.

4.3 Corporation Tax Act 2009 rules – derelict land

The CTA 2009 also widened the scope of the relief to include remediating land that was acquired in a derelict state. To be classed as derelict the land must not be in a productive state (economically or socially, including housing or recreation, etc.) and must be unable to be put into productive use without the removal of buildings or other structures. The land must have been derelict since 1 April 1998. HMRC will accept the National Land Use Database and Scottish Vacant and Derelict Land Survey as evidence of whether land is derelict. However, land does not have to be recorded in these data sources to qualify. Other evidence may be acceptable. For example, local media articles, insurance company information or empty property business rates classification may be suitable to demonstrate dereliction since April 1998. Similarly, the selling agent’s marketing particulars or a purchase survey may show that the land was derelict at the time of acquisition.
Works that qualify include preparatory works and the removal of:
- post-tensioned concrete heavyweight construction
- building foundations and machinery bases
- reinforced concrete pile caps
- reinforced concrete basements or
- redundant below-ground services.

4.4 Interaction with the Environmental Protection Act 1990

The land remediation relief legislation refers to land in a contaminated state. This differs from the term ‘contaminated land’ used in the Environmental Protection Act 1990 (EPA 1990), Part IIA. It is possible that land can be contaminated for land remediation relief purposes but not be contaminated for the purposes of the EPA 1990.

4.5 Interaction with landfill tax

Landfill tax is a tax on the landfill disposal of waste at licensed sites and is charged by the weight of the disposed material. Land remediation relief can be claimed on the cost of transporting waste to a landfill site and any charges levied by the site operator. However, land remediation relief is not available for the payment of landfill tax itself.

4.6 Key contaminants

By way of illustration, common contaminants include oil, petrol, diesel, asbestos and Japanese knotweed.

The FA 2001 used the term ‘substances’. A substance was defined as any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour. This included naturally occurring gases such as radon. Until 23 November 2008 HMRC took the view that life-forms were not substances. However, from 24 November 2008, to accommodate remediating Japanese knotweed contamination, HMRC changed its view to accept that a plant could be a substance.

In the CTA 2009, providing that the contamination is present as a result of industrial activity, the relevant terminology is widened to ‘something’. This includes the removal of radon and arsenic. It does not include water (for example, high groundwater) or air but may include pollutants present in water or air, nor does it include contamination resulting from the presence of living organisms or decaying matter deriving from them (except Japanese knotweed). Therefore, for example, burial sites, animal waste and naturally occurring hydrocarbons do not qualify. However, hydrocarbons deriving from the distillation of coal or the cracking of crude oil, such as petrol or diesel, are sufficiently remote from the living organisms, so do qualify for the relief.

4.7 ‘Polluter pays’ principle

A fundamental principle for land remediation relief is that the polluter pays. This means that the relief cannot be claimed by a company, or anyone connected to it, that caused the pollution through anything it did or failed to do. This can include contamination spreading or worsening, and applies even if, at the time the action was taken, it was standard practice in that industry and not considered to be contamination.
5.1 Entitlement to claim land remediation relief

The most fundamental issue when providing land remediation advice is to establish the business’ entitlement to claim tax relief (that is, whether it is legally permitted to claim any land remediation relief).

Land remediation relief is corporation tax relief, so it is advisable to confirm that the claimant is a company that is within the charge to UK tax (that is, not a non-taxpayer such as a charity, public body or self-invested personal pension). If the company is to benefit from the enhanced tax deduction it should also be sufficiently profitable to have recently paid, or be expected to pay soon, a sufficient corporation tax bill. Alternatively, it may be possible for it to benefit from the tax credit that may be repaid to it.

Land remediation relief is available to companies for both revenue and capital expenditure, but for capital expenditure it is essential that an appropriate tax election is entered into. It is advisable to confirm that this requirement is met.

5.2 Claims for land remediation expenditure

Land remediation relief is available for a broad range of works, including removal, containment or decontamination, as well as preparatory activities.

Land remediation relief claims should be based on detailed documentary evidence, as far as practicable. The information available and appropriate will depend on the particular circumstances. However, it may typically include, but not necessarily be limited to, the following documents:

- contract sum (for example, contract sum analyses, priced schedule of works, bills of quantities or accepted supplier quotations)
- final account, including variations
- payment certificates
- investigation or survey reports
- remediation strategy report
- site plan and drawings
- performance criteria and specifications
- financial statements showing expenditure recorded in the accounts and
- invoices.

The land remediation relief analysis is based on the actual expenditure incurred to carry out the remediation works. This may include main contract and subcontracted works, plus potentially any works undertaken directly or in-house by the claimant. It is advisable to verify the total expenditure by checking the company’s financial accounts, and reconciling the remediation cost documentation and land remediation analysis to this. Special conditions apply to subcontracted expenditure that surveyors are recommended to consider.

The cost of remediation works may include an appropriate allocation of related on-costs, such as preliminaries and associated professional fees.

Sometimes third-party funding is received towards the cost of remediation works (for example, a contribution or grant). Subsidised expenditure does not qualify for land remediation relief. Therefore, where money has been received the facts need to be considered and, if necessary, the receipt deducted from the taxpayer’s expenditure. If, however, the expenditure is greater than the subsidy or grant received, then the balance of expenditure can qualify. This can be worth considering.
5.3 Regular update and review of legislation, case law and HMRC practice

Land remediation law and practice sometimes changes. It is advisable to remain aware of this and ensure that advice is based on the rules and practice in force at the appropriate time.

5.4 HMRC and VOA manuals

HMRC and the VOA publish manuals and other explanatory material, but these do not have the force of law. While they provide useful guidance and outline the government’s practice and official view on a particular matter, they should be treated with caution. A tribunal or court is obliged to apply the law, even where this conflicts with HMRC guidance.

A properly informed and advised taxpayer is free to adopt a different view of the law to the published view of HMRC or the VOA. However, to protect against a subsequent discovery assessment it may be advisable for the tax return or accompanying documents to indicate that a different view has been adopted. Discovery gives HMRC powers to re-open a seemingly agreed tax return up to 20 years after HMRC’s normal time limit for enquiring into a tax return has passed.
This section outlines practical considerations that need to be taken into account when advising on land remediation relief. It is important that a surveyor does not give advice that is beyond the scope of their knowledge and experience, particularly in the area of taxation.

6.1 Claims for land remediation expenditure

When remediation works are being considered it can be prudent to consider land remediation relief as early as possible.

Adequate due diligence is necessary to establish the business’ entitlement to claim land remediation relief. This is usually dealt with, in part, by the seller completing form CPSE.1 (see paragraph 3.2), although some conveyancing advisers use their own in-house versions. In the light of this information it is advisable that the transaction is structured to ensure that land remediation relief is available, for example by ensuring that the acquirer is a company. Take particular care in joint venture arrangements, or where connected parties are involved. For example, land remediation relief is not available where the land is contaminated or in a derelict state, wholly or partly, by anything that has been done or not been done by the potential claimant company or anyone connected to it. It is also not available where the polluter or a connected party retains an interest.

The works that can qualify for land remediation relief are broad. It is not always obvious that works will qualify, and surveyors should recognise when specialist assistance is required.

Where a subsidy or grant is received that is not allocated to particular items of work then it should be allocated in a just and reasonable way.

6.2 General

Land remediation relief is a corporation tax relief and can interact with other areas of taxation. Be mindful of other areas of tax that may require consideration. This can be complex. For example, land remediation relief is not available if a capital allowance has been, or may be made, in respect of the expenditure. Also, capital expenditure on qualifying land remediation is not an allowable deduction for CGT purposes, so land remediation relief may be partially or fully clawed back if the property is sold.

HMRC may check any tax return (that is, open an enquiry or so-called investigation). This includes asking questions, reviewing documentation and inspecting premises to establish whether the tax return is correct and complete. Where in HMRC’s view this self-assessment obligation has not been met, it can assess the tax that it considers should have been due and charge interest and penalties for inaccuracies. Returns are selected for enquiry on a random basis. They may also be selected, for example, according to risk, or where significant tax is at stake, or where HMRC suspects that something might be wrong. Ordinarily HMRC can query a land remediation relief claim within 12 months of the tax return due filing date. However, where there has been inadequate disclosure, or careless or deliberate conduct by the business or someone acting on
its behalf (such as a surveyor), this can be extended until up to 20 years after the end of the tax period.

A business also has a self-assessment obligation to keep records to enable it to submit a correct and complete tax return. For corporation tax purposes the timeframe is six years from the end of the relevant accounting period. Therefore it is advisable to retain a thorough audit trail to reconcile the land remediation relief claim to the original documentation or estimating sources used to prepare the claim.

HMRC routinely enquires into land remediation relief claims. When giving land remediation relief advice it is worth surveyors being mindful of taxpayers’ self-assessment obligations and HMRC’s enquiry powers, and ensuring that any advice given, disclosure to HMRC and the surveyor’s working practices (such as document retention) are appropriate.

When a HMRC enquiry is opened into a land remediation relief claim, correspondence and meetings may be necessary to agree the claim with HMRC or the VOA. It is possible that negotiated concessions may be necessary to reach a settlement, and interest and penalties may be considered. Dealing with HMRC enquiries to robustly serve a business’ interests involves good negotiation skills and a sound knowledge of the taxpayer’s rights and HMRC’s powers. The process of negotiation, a company’s rights, and HMRC’s powers are beyond the scope of this guidance note.

Fundamental issues to consider are whether a surveyor has the ability to deal with land remediation relief, and appropriate professional indemnity insurance cover. If advice is given then a court will take the view that the individual or organisation giving the advice was holding itself up as having the requisite knowledge. A court will not apply a lower standard to a surveyor who provides advice on land remediation relief because they are not a tax professional. Where a person or an organisation holds themselves up as having knowledge in a particular area, then the court will apply the standard of a reasonably competent person appropriately qualified for such advice.
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