

Land remediation relief

Comments from Saffery LLP

1. Executive summary

1.1 We welcome the chance to comment on the design and impact of Land Remediation Relief (LRR) as part of the government's support for brownfield development.

1.2 In summary, our key points are as follows:

- The relief is more likely to influence decisions for smaller developers with a direct interest in post-tax outcomes.
- Developers assess contamination early in the land acquisition process, but the extent of qualifying expenditure is often unclear until site preparation.
- Expansion of the relief to include invasive plants beyond Japanese Knotweed, such as Giant Hogweed and Himalayan Balsam, would be welcome, as these are common and can materially affect development.
- Claims for derelict land relief are extremely rare due to the requirement that land must have been derelict since April 1998. A rolling 10-year test would improve accessibility and reduce uncertainty.
- Where landowners are not responsible for contamination caused by tenants, they should still be eligible for LRR when redeveloping the land.
- The timing of relief for large housebuilders, linked to GAAP recognition when plots are sold, creates significant compliance burdens and delays the benefit. This reduces the value of the relief and introduces uncertainty.
- The surrender of losses for a cash credit is extremely rare. Carrying losses forward is generally more valuable. An above-the-line credit, similar to the R&D expenditure credit (RDEC), would improve visibility and influence decision-making, particularly within larger organisations.
- There is no general rule on the proportion of eligible costs. It depends on site history and contamination type.
- HMRC guidance should clarify the treatment of 'made ground' and whether unstable ground qualifies for relief. Current manuals lack clarity on this point.

1.3 We would be happy to discuss the points raised here in further detail. If you have any questions, or would like any further information, please contact: Sean McGinness, National Tax Partner, on 0131 221 3217 or email sean.mcginness@saffery.com or Richard Meller, Director – Corporate Tax, on 0330 094 2066 or email richard.meller@saffery.com.

2. Specific consultation questions

2.1 **Question 1: What factors influence site selection for development, how does LRR affect this and how do businesses establish the amount of contamination or dereliction?**

2.1.1 When selecting a site, developers typically weigh:

- a. Land cost and expected gross development (GDV)/return on capital employed,
 - b. Planning risk,
 - c. Abnormal costs (eg remediation, demolition, utility diversions, abnormal foundations),
 - d. Financing cost and availability,
 - e. Delivery programme, and
 - f. Local demand, sales velocities, and estimated rental values (ERVs).
- 2.1.2 The presence of contamination is a key part of any pre-acquisition land review and is usually considered in detail before a land purchase by developers of all sizes. It is common for the existence of contamination to be flagged for tax purposes at this stage of acquisition.
- 2.1.3 Remediation strategies are generally developed at the site evaluation stage. At this point, estimates of qualifying expenditure are typically high level, as the full extent often only becomes clear during the site preparation stage. For example, an asbestos survey may confirm its presence, but the scale is often only understood once demolition begins.
- 2.2 **Question 2: What are the main barriers to development on i) Brownfield sites, and ii) in particular, contaminated and long-term derelict land? To what extent/how does LRR help with these versus other options, such as grants?**
- 2.2.1 No comment.
- 2.3 **Question 3: To what extent are the right projects able to access LRR, given the structure and design of the relief?**
- 2.3.1 No comment.
- 2.4 **Question 4: We have heard representations that the following aspects of the design of LRR act as an impediment to incentivising development of contaminated or derelict land, which we are seeking views on in particular: the scope of covered activities/elements, the definition and qualifying date for 'derelict land', the 'continuous use' rule, and the 'polluter pays' principle.**
- 2.4.1 We would welcome an expansion of the relief to cover invasive plants beyond Japanese Knotweed, such as Giant Hogweed and Himalayan Balsam, as these are often significant obstacles in development.
- 2.4.2 In our experience claims for relief in respect of derelict land are extremely rare, largely due to the requirement that land must have been derelict since April 1998. A rolling 10-year test would reduce uncertainty and make the relief more accessible.

- 2.4.3 We have seen cases where land was contaminated by tenants during a lease, and the landowning company later sought to develop the site. Where the landlord company is not responsible for the contamination, it is unclear why they should be excluded from claiming LRR.
- 2.5 Question 5: Are there other aspects of the design that act as an impediment to incentivising the development of contaminated or derelict land?**
- 2.5.1 No comment.
- 2.6 Question 6: How complex is the relief to claim? To what extent does administrative complexity of claiming the relief hinder the relief from achieving its objectives?**
- 2.6.1 The relief is administratively complex for housebuilders on large developments. Relief is only available when costs are recognised under Generally Accepted Accounting Principles (GAAP), which is typically when plots are sold, and work in progress is released to costs of sales within the income statement to match the sales revenue.
- 2.6.2 This delay can span several years, creating significant compliance costs and record keeping, including detailed tracking and allocation of remediation costs across multiple phases and plots. Sometimes additional qualifying expenditure can be incurred after some plots have already been sold, or the number of plots on a site may change as the development progresses requiring recalculations.
- 2.6.3 This can also create a delay of many years between the remediation expenditure being incurred and tax relief being due. The timing mismatch reduces the value of the relief due to the time value of money and creates uncertainty, as the tax benefit depends on future corporation tax rates. Recent changes, such as the increase in the corporation tax rate to 25% and the introduction of Residential Property Developers Tax (RPDT) can distort the actual compared to expected relief.
- 2.6.4 Unlike developers, property investors can claim immediate relief for LRR expenditure via a 150% deduction for capital expenditure. It is unclear why developers should face delayed relief, and we recommend a review of this policy distinction.
- 2.7 Question 7: To what extent does the legislative complexity of the relief hinder it from achieving its objectives?**
- 2.7.1 We do not consider the legislation is unduly complex.
- 2.8 Question 8: What role does the credit element of LRR play in influencing decisions in site selection/proceeding remediation works?**
- 2.8.1 If the question refers to the cash tax credit available through surrendering losses under LRR, our view is that this has very limited influence on site selection or remediation decisions. Surrendering losses is extremely rare, as the value of carrying losses forward to relieve tax

at 25% (or 29% with RPDT) generally outweighs the short-term benefit of surrendering losses for a tax credit.

2.8.2 More broadly, LRR's impact varies by developer type. Smaller and owner-managed regional developers, where the business owners are closely involved in land purchase decisions, tend to place greater value on the post-tax result of their company and are more likely to factor LRR into their decisions.

2.8.3 In contrast, listed companies often operate through regional divisions where divisional results are determined at a pre-tax profit level. Such performance metrics do not take account of LRR and we consider that an above the line approach to LRR (similar to the RDEC credit for research and development expenditure) where credits would be booked within divisional results would better align the benefit of the relief and make it a key focus of decision makers within organisations. An above the line credit could be the difference between a site evaluation being considered as economically viable or not.

2.8.4 Additionally, while perhaps unlikely, the current enhanced deduction method of relief for LRR could result in a UK company being liable to the Domestic Top Up Tax under Pillar 2, which would be resolved by an above the line approach to relief.

2.9 Question 9: In general, what proportion of overall costs tend to be eligible for LRR?

2.9.1 There is no general rule here. It depends on the historic use of the site and the nature and extent of the contamination involved. For example, a site previously used as an office building might contain elements of asbestos requiring specialist removal, in which case the eligible costs would be expected to be fairly negligible as a proportion of total costs.

2.9.2 In contrast, a site previously used for heavy industrial activity, such as a chemical plant, would be expected to have a far higher level of qualifying expenditure proportionally, due to the likelihood of heavy metals etc within the ground.

2.10 Question 10: How much eligible land is there? How does this compare to when the relief was first introduced?

2.10.1 No comment.

2.11 Question 11: Are there examples of contaminated and derelict land that has been developed as a result of LRR? Do you have a sense of how much contaminated or derelict land has been developed overall as a result of LRR?

2.11.1 No comment.

2.12 Question 12: Are there examples of where LRR has contributed to projects that would not have proceeded absent the relief? Similarly, are there examples of where LRR has contributed to projects that would have proceeded absent the relief?

2.12.1 No comment.

2.13 Question 13: How does LRR compare with other forms of support for the development of Brownfield land, such as the Brownfield Infrastructure and Land Fund, and local government support? What benefits or drawbacks would, for example, a grant have compared with a tax relief to the same value?

2.13.1 No comment.

2.14 Question 14: What impacts do interactions between LRR and other forms of support, such as government grants, have?

2.14.1 No comment.

2.15 Question 15: What is your understanding of why customers and/or their agents may make errors when submitting claims for LRR or the LRR tax credit?

2.15.1 No comment

2.16 Question 16: Are there any changes that could be made to the LRR guidance or rules to help prevent errors when making LRR claims, and/or make the process more straightforward?

2.16.1 We consider that specific guidance in relation to 'made ground' would be a useful addition to the manuals. We understand HMRC accept that costs associated with deeper piles which are required as a result of contamination within 'made ground' can qualify for relief. However, it seems that the need for deeper pilings would be caused by the inherent unpredictable strength and settlement characteristics which are natural properties of 'made ground', rather than due to any specific contaminant contained within it.

2.16.2 Clarification of HMRC's view on this issue, and in what circumstances 'made ground' can qualify for land remediation relief, with examples, would be helpful and create uniformity of approach to this issue within the sector.

2.17 Question 17: Are there fraud risks associated with LRR, particularly with the payable tax credit part of the relief?

2.17.1 No comment.

2.18 Question 18: What additional processes could help to reduce error or fraud without introducing disproportionate administrative burdens?

2.18.1 No comment.

3. About Saffery LLP

3.1 At Saffery, we're more than just chartered accountants and tax and business advisers. We're a partner-led and people-focused firm, committed to our clients and honouring our heritage.

- 3.2 Since 1855, we've evolved in size and scope, but our unwavering dedication to exceptional client service remains the same.
- 3.3 As a proud member of Nexia, a worldwide network of trusted member firms, we've got access to local insight on a global scale.
- 3.4 In the UK, Saffery LLP is the 15th largest accountancy firm by fee income, with 90+ partners and 1,200+ staff across nine offices. Overseas, Saffery is represented in Cayman, Guernsey, Geneva, Zurich, Dublin and Dubai.