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Structures and Buildings Allowance

Autumn Budget 2018 announced the introduction of a new capital allowance: the Structures and Buildings Allowance (SBA).

In outline, the SBA will be given at a flat rate of 2% per annum over a period of 50 years. It will provide relief for spending on the construction of commercial – but not residential - property. Special provisions will apply on disposal, with any remaining benefit passing to the purchaser.

Work in progress

The SBA will be available for eligible construction costs incurred on or after

29 October 2018. There is unfortunately still some uncertainty about the small print of the rules, though the detailed legislation should be finalised over the summer.

There has been no tax relief for capital spending on buildings since the end of the Industrial Buildings Allowance in 2011, and the government hopes that the SBA will encourage investment and enhance the UK's competitive advantage. Whilst the new relief is a welcome development for business, there are a number of areas where problems could arise. In particular, close attention will be needed when looking at the interaction of the SBA rules with other rules on capital allowances.

Overview

The SBA provides relief for spending incurred on or after 29 October 2018 on commercial buildings and structures where:

- construction of the building or structure begins on or after 29 October 2018
- expenditure is 'qualifying expenditure' and
- is for construction or acquisition costs on or after 29 October 2018 and
- the building or structure is not in residential use.

As regards timing, there is some detail to note. Construction will be treated as beginning before 29 October 2018 if the contract for construction was entered into before this date: or if the contract was begun on or after this date, but there was a connected preparatory contract begun before then.

If the building or structure comes into residential use, the SBA is no longer available.

There are special provisions on demolition. The SBA can only be claimed from when the building or structure first comes into qualifying use.

Relevant interest

In principle, the person incurring construction expenditure on a building or structure will, if having an interest in the land (the 'relevant interest'), and carrying on a qualifying activity, be entitled to claim SBAs. There will sometimes be more than one person eligible to claim SBAs: where someone with a freehold interest incurs construction costs, and a leaseholder incurs capital expenditure on renovations, for example. An interest in the land must be held when the qualifying expenditure is made.

The position with regard to leases is complex. There are special rules if a lease of 35 years or more is granted out of the interest which is the relevant interest in relation to the qualifying expenditure. If the market value of the retained interest in the building or structure is less than one third of the capital sum given as consideration for the lease, then on the grant of the lease, the lessee is treated as acquiring the relevant interest in the building or structure. We should be delighted to provide more in-depth advice tailored to your circumstances.

Qualifying expenditure

Not all spending will attract relief. Costs which do not qualify include spending to acquire land or rights in or over land, or spending on altering land. Fees, stamp duty and incidental costs attributable to acquiring land are thus not allowable. Neither is spending on planning permission, fees and related costs: or spending on the provision of plant and machinery.



If a building is sold before it is brought into qualifying use, there are slightly different rules as to the total amount of qualifying expenditure. There are also different rules when a developer makes a sale. We should be happy to advise further here if this is of relevance to you.

Capital expenditure on renovations or conversions of part of a building or structure qualifies for SBA: it is treated as if it were capital expenditure on the construction of that part of the building or structure for the first time. This means such enhancement expenditure will have to be dealt with separately, and each set of expenditure will get its own 50-year time clock. This has particular repercussions in terms of record-keeping, claims and write-off (see below).

Qualifying activities and qualifying use

To attract relief, use must be for specified business purposes. Essentially, a 'qualifying activity' is a trade, a profession or vocation. An ordinary UK or overseas property business would also constitute a qualifying activity; the charge to tax must be in the UK, but the relief will be available for property overseas.

Residential use does not qualify for SBA, and the SBA has its own definition of 'residence'. Use as a dwelling house, a prison, residential accommodation for school pupils, and residential accommodation for members of the armed forces is excluded. So too is student accommodation. This is defined as either purpose-built or converted accommodation which is available for student occupation for at least 165 days each calendar year. Furnished holiday lettings are also excluded from the SBA. No part of a dwelling house can qualify, so part of a dwelling house used as a home office would be excluded. Further guidance on the small print is anticipated.

Particular attention to the detail of the rules is needed with care home accommodation. A home providing residential accommodation - along with personal care necessary because of old age, disability, mental health, alcohol or drug-related issues - will qualify for relief. Otherwise it will not.

The SBA can continue to be claimed even during periods of temporary disuse, provided the building or structure is not used for a residential purpose.

It can sometimes be the case that a building or structure has mixed non-residential use, and only a part is used for eligible purposes. In this case, the rules specify that apportionment can be made on 'a just and reasonable basis'. Note however, that this does not extend to the use of a residential property for business.

Disposals

There are special provisions regarding disposals. No balancing allowance or charge

is given. Instead, the purchaser acquires the remaining SBA for whatever is left of the initial 50-year period, and the SBA is still based on the original purchase cost. It is not adjusted for any increase in value that may have arisen.

As far as the seller is concerned, there is an interaction with the computation of the capital gain or loss. The base cost for computing a capital gain will be reduced by the amount of the SBA claimed up to this point, essentially clawing back the tax relief already given. To this extent, the SBA is really a mechanism to bring tax relief forward, and is not as generous as might have been hoped.

The rules regarding demolition have changed in the period since the SBA was first announced. Demolition normally results in a deemed disposal of the building, and a disposal and reacquisition of the underlying interest in land for the calculation of capital gains. In principle, any unrelieved SBA will be claimed as a deduction in the capital gains calculation.

Interaction with existing rules

The introduction of the SBA adds a new element to the existing rules on capital expenditure. The existing reliefs for integral features and fittings, and plant and machinery are not superseded, and the way that the old and new provisions interact will need consideration.

If expenditure qualifies for another relief, such as plant and machinery allowances, it will not be eligible for the SBA. It has always been important to consider whether some of the expenditure is eligible for plant and machinery allowances and that these are claimed. This is considered in more detail below.

Keeping the right evidence

The importance of creating and keeping the right documentation to substantiate a claim for the SBA cannot be overstated. As the relief is given over a 50-year period, the trail of evidence will need to be similarly long-lived. If the structure or building is sold during this period, documentation will need to be passed from seller to purchaser. Without the relevant paperwork, claims by current or future owners may stand to be treated as nil. The record-keeping burden is thus not insignificant.

In order to create an initial claim for the SBA, the owner must make an 'allowance statement'. The allowance statement comprises a written statement of the date of the earliest written contract for the construction of the building or structure: the amount of qualifying expenditure incurred on its construction or purchase: and the date on which it is first brought into non-residential qualifying use. Other supplementary information may also be required by HMRC.

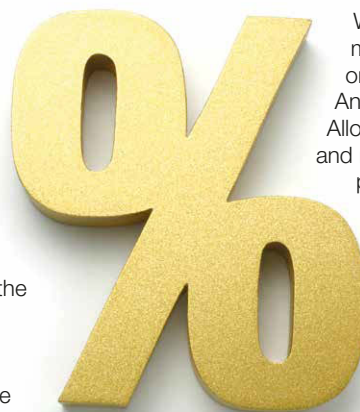
This will usually have to be passed on to any subsequent owner.

Businesses will thus need to keep detailed records of expenditure, with separate analysis of any subsequent expenditure, for example on renovations. Where there are multiple assets, each will need its own documentation, setting out costs from acquisition and construction, to improvement and disposal.

Planning points and problem areas

The SBA adds another layer of complexity to claims for capital allowances. A key area to focus on is the split between items where a claim for plant and machinery allowances is appropriate, and those where the SBA is appropriate.

Making a blanket claim for the SBA on total expenditure might seem less onerous in terms of record keeping. This, however, could substantially reduce tax relief, and could lead to a partially invalid claim, since the SBA is not available for expenditure on plant and machinery.



While the SBA gives maximum relief at only 2% a year, the Annual Investment Allowance (AIA) for plant and machinery potentially provides immediate relief at 100% of costs incurred. Even if the AIA limit is exceeded, General Pool plant and machinery still obtain relief at 18%, and Integral Features at 6%.

Where a lease is granted, landlords and tenants should consider the special rules for grants of leases of 35 years or more, carefully. The terms of the lease may affect who is entitled to the SBA.

As the SBA is available from 29 October 2018, it is available for unincorporated businesses and companies with accounting periods spanning 29 October. Thus returns currently in preparation may be affected, even though the final legislation and Guidance were unavailable at the time expenditure was made.

How we can help

We should be delighted to advise further on the new relief as the rules are finalised. As the SBA is introduced, we can help you maximise claims, identify areas where you might be eligible for the SBA, or where a claim for plant and machinery allowances would be appropriate. We can also advise on the record-keeping requirements of the new regime. Please do get in touch to discuss the new SBA or any other matter relating to capital allowances.