

Tax incentives for development of brownfield land: a consultation

March 2007



HM TREASURY



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of brownfield land:
a consultation**

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INTRODUCTION

1.1 The Government is committed to a step change in housing supply and alongside the 2005 Pre-Budget Report set out an ambition to increase housing supply by 200,000 net additional homes per year by 2016. At the same time it is committed to maintaining a high proportion of development on brownfield sites. The Government is also committed to providing long-term help to clean up land contaminated in the past by long discontinued industrial activities and by our industrial past and the regeneration of our towns and cities.

1.2 The Barker review of Housing Supply (2004) recognised that brownfield land is typically more costly and difficult to assemble and build on than greenfield land but usually offers greater positive externalities, for example through urban regeneration. It went on to recommend that land remediation relief should be extended to long derelict sites, as long as the extra public money levered into the market through the extension would lead to new investment in brownfield land and not simply subsidise development that would have taken place anyway. This consultation suggests how this recommendation could be met in Chapter 2.

1.3 The Barker Review of Land Use and Planning (2006) recommended that fiscal incentives should be used to encourage efficient use of urban land. It also recommended that the Government should consult on reform to land remediation relief to help developers bring forward hard to remediate sites. Land remediation relief provides a channel for Government support to return to productive use properties and vacant land that suffer from contamination or features of long-term dereliction.

1.4 The Government uses a variety of tools to tackle the problem of hard to remediate sites. These include planning conditions and obligations, grants, partnership with the private sector (for example through English Partnerships) and tax incentives. This document is concerned with tax incentives, and in particular the two current tax reliefs which benefit developers and others involved in cleaning up contaminated land. These are a corporation tax relief known as land remediation relief and an exemption from landfill tax for waste derived from contaminated land that is sent to a landfill site.

1.5 Recent shifts in development policy and practice, for example the increasing focus on sustainable development, increased use of planning obligations and a focus on brownfield development make this is a good time to consider modernisations to achieve better value for tax payers' money and greater incentive to remediate sites. This consultation is your chance to participate in the debate, and to inform Government policy in this area for the future.

Land remediation relief

1.6 Land remediation relief was enacted in 2001 as part of the Government's response to Lord Rogers' Urban Task Force in 1999. The Government's response was contained in the Urban White Paper published in November 2000. At Budget 2001, the Government said:

The Government wants to improve the confidence of owners and investors to bring contaminated land back into productive use and assist with the costs of doing so. Budget 2001 introduces a 150 per cent accelerated payable tax credit for owners and investors for the costs they incur in cleaning up contaminated sites. The measure will make the development of these sites more viable, helping to tackle the legacy of previous industrial uses and reduce the pressure to develop greenfield sites.

1.7 The relief gives a tax deduction of 150% of qualifying expenditure for the costs of decontaminating land. (Full details of the conditions for the relief can be found at Annex B). The Government remains committed to these aims and to the continuation of the relief, but after 6 years of operation it is time to consider how the scope and take up of the relief can be improved to help it more efficiently deliver the objectives set out in 2001.

1.8 In 2006, HM Revenue and Customs published an early evaluation of the Urban White Paper fiscal measures by Ulster University. This included an evaluation of land remediation relief. This found that awareness of the relief was generally low but had been increasing. Although finding some evidence that land remediation relief had encouraged companies to take on further schemes on contaminated sites, the research concluded that it was too early to quantify the effects. As development projects typically work to long timescales and it takes time for such tax incentives to be incorporated into investment decisions, the full effects of land remediation relief will only emerge over a longer time period.

Landfill tax

1.9 The landfill tax exemption was introduced when landfill tax began in 1996. In the context of reviewing tax incentives for decontaminating land, this document considers the role of the landfill tax exemption and consults on the possibility of reform.

1.10 The Government would however be interested in ideas that those in the industry have to improve awareness of the relief to ensure it is factored into development decisions at an early stage.

Government objectives

1.11 Improved tax incentives for remediating brownfield land can support Government objectives aimed at increasing the supply of brownfield land for development. Wider Government objectives which these proposed reforms aim to support are:

- responding to recommendations of Kate Barker's reviews of housing supply (2004) and planning (2006);
- responding to other Government policy measures relating to brownfield land, such as, in England, the National Brownfield Strategy prepared by English Partnerships and the Department for Communities and Local Government; and
- contributing to meeting the target that 60% of new homes are built on brownfield sites.

1.12 The objectives of the reforms considered in this document are:

- to ensure land remediation relief continues to promote the development of hard to remediate sites and the return to beneficial use of sites in areas of market failure;
- to target the relief more effectively by tightening the qualifying conditions and enlarging its scope;
- to encourage the use of innovative, on site and in situ techniques to remediate land; and
- to ensure that landfill tax continues to fulfil wider environmental objectives in respect of waste derived from contaminated land.

This consultation

1.13 This consultation concerns the future form of tax reliefs to assist with the decontamination of land and to encourage development of long-term derelict sites.

1.14 The paper discusses proposals for reform in 5 areas:

- long-term derelict land;
- development focus;
- speed and certainty of relief;
- Japanese Knotweed; and
- landfill tax exemption for waste from contaminated land.

1.15 Any changes which arise from this consultation will be introduced in the future, and not before 2008. The Government aims to respond to the consultation with more definite proposals at the 2007 Pre-Budget Report and will at that time set out a timeline for reform.

2

THE CHALLENGE OF LONG-TERM DERELICT LAND

Land remediation relief – long-term derelict land

2.1 The United Kingdom has in recent decades experienced a substantial shift in the patterns of industry and employment, leading to a considerable amount of previously developed land falling out of use. Much of this land can be described as derelict in that it may have had no economic use since its previous use ended. This land can loosely be called “brownfield” land.

2.2 The 2004 Barker Review of Housing Supply noted that there were benefits to subsidising regeneration of brownfield land including positive externalities such as urban regeneration. It noted that there were benefits in public subsidy for bringing this land back into use, and went on to recommend that land remediation relief should be extended to long-term derelict land¹.

2.3 In England the National Land Use Database (NLUD), drawn up by English Partnerships, catalogues previously developed land with the objective that Government action can be more accurately targeted. NLUD figures from 2005 indicate an estimated 63,500 hectares of previously developed land in England. 58% of this, 36,600 hectares was vacant or derelict. Of this about a third has been derelict since 1998².

2.4 In Scotland a similar survey, the “Scottish Vacant and Derelict Land Survey” performs a similar function. The 2006 survey shows 10,386 hectares of derelict and vacant urban land³.

2.5 There are regional variations in the pattern of derelict land. In London and the South East for example, the amount of derelict land that is vacant is less than in other regions. Most long-term derelict land lies in the former industrial areas of the Midlands and the North of England.

2.6 Derelict land can often remain vacant for many years for a number of reasons. These can include availability of infrastructure, population shifts, issues relating to planning permission and the costs associated with developing the site. Government intervention can help overcome these barriers, and tax relief has a role to play in reducing the costs of remediation. The introduction of land remediation relief in 2001 has provided help to developers of and investors in contaminated sites across the UK. However it currently provides no specific help to deal with issues associated with or arising from long-term dereliction, unless contamination is present.

2.7 The Government is considering extending land remediation relief to provide additional help for long-term derelict land where derelict works, buildings and structures are a barrier to development. The intention would be to provide relief at the enhanced 150% rate for certain expenditure on long-term derelict sites, thereby improving the economic viability of development and helping land owners bring sites back into use.

¹ Review of Housing Supply, Kate Barker March 2004 paragraphs 4.27 to 4.30 and Recommendation 25

² Previously Developed land that may be available for development: England 2005, published by the Department for Communities and Local Government August 2006.

³ Scottish Vacant and Derelict Land survey 2006, Scottish Executive PLG/2007/1. 31 January 2007.

2.8 The two main conditions for the relief would be that the site would have to be both vacant and derelict (i.e. not in use) and would have to be long-term derelict. For example the legislation could require that the land would have to have been derelict and vacant from a fixed point in the past. In considering when that should be, the Government would consider value for money and the desire to focus help on sites that were long-term derelict. A leading option is 31 March 1998, because that is a date identified in NLUD.

2.9 Determining whether the land was long-term derelict would be up to the taxpayer, in line with the existing relief and the self-assessment system for corporation tax. But HM Revenue and Customs would accept that presence of the land in a vacant state on the NLUD or other databases from the fixed date as evidence of the derelict status and that it had been designated for development since that date. This would give landowners an incentive to ensure land was registered.

2.10 In order to ensure that relief is accurately targeted, it should focus on removing barriers to development caused by dereliction. The relief should therefore apply for specific classes of expenditure and not the full costs of development. Relief could, for example, be available for expenditure on:

- demolition and removal of existing structures, buildings or other works, including those located underground;
- removing or making good obsolete services such as electricity, water, sewerage or gas;
- creating adequate access to the site; and
- fees and other costs directly related to the above.

2.11 Clearly there are many factors which affect the development of derelict land, and the Government's main policy will continue to be to use regeneration agencies such as English Partnerships to lead regeneration. But it believes that an enhanced land remediation relief, as recommended by Kate Barker, could improve the viability of derelict sites and help generate new housing and other development on brownfield land.

Questions on Chapter 2

- Are there any other qualifying criteria for long-term derelict sites that should be explored?
- What costs represent a barrier to the development of long-term derelict land and would be suitable for inclusion in any extension of land remediation relief to long-term derelict land?
- Are there categories of expenditure that should be excluded?

3

FOCUSING ON DEVELOPMENT

Land remediation relief – planning permission

3.1 When land remediation relief was introduced in 2001 the Government said that it was intended to improve the viability of development on contaminated sites. However the current conditions for the relief do not include any requirement that the expenditure results in new development. Often the remediation or site treatment will be part of new development but at present the relief is available for any decontamination of land except by the person who polluted it in the first place.

3.2 This means that a proportion of the relief claimed to date has gone to landowners for remediating land or buildings where no new development or other land reuse is in prospect. The Government believes that the relief should be more narrowly targeted in future.

3.3 The Government's aim is that the relief should promote new development by improving the economic viability of contaminated and long-term derelict sites. It therefore wishes to consult on whether there is scope to improve targeting by linking the expenditure to planning consent. For example the relief could be dependent on the expenditure having been incurred pursuant to a planning condition or obligation. This would, for example, include section 106 obligations. Guidance on planning conditions for contaminated land is set out for England in Planning Policy Statement 23(PPS23) at Annex 2.

3.4 Planning permission may not however ultimately result in completed development. The Government recognises that this may occur for a variety of commercial reasons but would like consultees to consider whether any additional conditions should be applied to ensure that the expenditure leads to new development.

3.5 This would allow available resources to be more accurately targeted and to enable the current relief to be enhanced, for example with the extension to long-term derelict land discussed above, and the extension to Japanese Knotweed discussed in Chapter 5.

Questions on Chapter 3

- Would the introduction of a planning permission condition be the most effective way to target relief more closely on development?
- Would there be benefit from applying any additional conditions?
- What are the practical difficulties associated with this approach?

4

LAND REMEDIATION RELIEF - TIMING OF THE RELIEF

4.1 The Government would like land remediation relief to be available as quickly as possible, but recognises that to protect the Exchequer from incorrect claims to tax reliefs, especially those involving repayable credits, it is necessary to assure a certain level of compliance. Land remediation relief is a corporation tax relief and therefore it is prudent for compliance purposes to have the company accounts and tax computation available before any tax credit is repaid.

4.2 The relief is taken into account for corporation tax purposes in the accounting period in which it is incurred or, in the case of expenditure on land held as trading stock, when the expenditure is brought into account for tax purposes determined by generally accepted accounting principles.

4.3 Accounts cannot be prepared until a company's period of account has finished, and accounts are normally prepared annually. It follows therefore that there is likely to be some delay between the incurring of expenditure and the delivery of relief, either through reduced corporation tax liabilities or payment of tax credit.

4.4 As long as land remediation relief is a corporation tax relief this delay seems unavoidable. Nevertheless developers should factor the benefit of the relief into their development costings as the availability of the relief will increase the profitability of brownfield development.

4.5 There has been some indication however that the relief is not always factored into plans from the start of a development. The Government is interested in the views of consultees on whether this is the case and if so what steps could be taken to ensure that financial planning for development projects takes full account of availability of relief from the start.

Questions on Chapter 4

- Is it possible to accelerate relief whilst ensuring that the tax system is not open to abuse?
- If the availability of land remediation relief is not factored into financial planning, what additional certainty could be given to ensure that it is?

JAPANESE KNOTWEED

5.1 Japanese Knotweed (*Fallopia Japonica* and closely related species) is a tall vigorous ornamental plant that escaped from cultivation in the late nineteenth century and is now an aggressive invader of both urban and rural environments. Sites such as road verges, railway land and watercourse corridors may be affected.

5.2 Japanese Knotweed can:

- cause structural damage to buildings and structures;
- push through tarmac and paving;
- damage flood defences; and
- disrupt sight lines in roads and railways.

5.3 Japanese Knotweed is subject to statutory controls. Section 14(2) of the Wildlife and Countryside Act 1981 makes it a criminal offence to plant or otherwise cause Japanese Knotweed to grow in the wild. Other relevant legislation includes the Environmental Protection Act 1990, which includes in the definition of controlled waste plant material or soil containing Japanese Knotweed, controls on use of herbicides and the classification as hazardous waste under the Hazardous Waste Regulations 2005 of material containing Japanese Knotweed which has been treated with certain herbicides.

5.4 The Environment Agency publishes a Knotweed Code of Practice¹ giving advice to developers on the management of Japanese Knotweed on development sites. Preferred strategies to control Japanese Knotweed include herbicides, root barrier membranes and on site treatment.

5.5 Japanese Knotweed has become a significant cost for many developers, especially as its removal and control is required by the Environment Agency and removal can be a planning condition.

5.6 As part of these reforms to regeneration incentives, the Government would like to review whether it is appropriate to extend the scope of land remediation relief to cover expenditure on removing Japanese Knotweed. Any decision would need to balance the additional costs with the wider environmental benefits in the context of an already tight regulatory framework. To inform any decision the Government would like to explore the economic impact of Japanese Knotweed with interested parties. In particular it would welcome information about:

- the costs associated with Japanese Knotweed control and removal;
- the extent to which Japanese Knotweed associated costs are a barrier to development; and
- the types of treatment that developers find most cost effective.

5.7 Japanese Knotweed is an exceptional plant in the context of development because of its particular potential to damage property and undermine development projects. The Government is therefore not minded to extend relief further than *Fallopia Japonica* (and related strains controlled as Japanese Knotweed) because of its particular

¹ Environment Agency 2006

persistence, destructive potential and prevalence on development sites. Other plants can require treatment in particular cases but the Government does not currently believe there is a strong case for any other plant to qualify. If change is made to land remediation relief the Government would take the opportunity to clarify that land remediation relief is not available for cleaning up other natural “contaminants”.

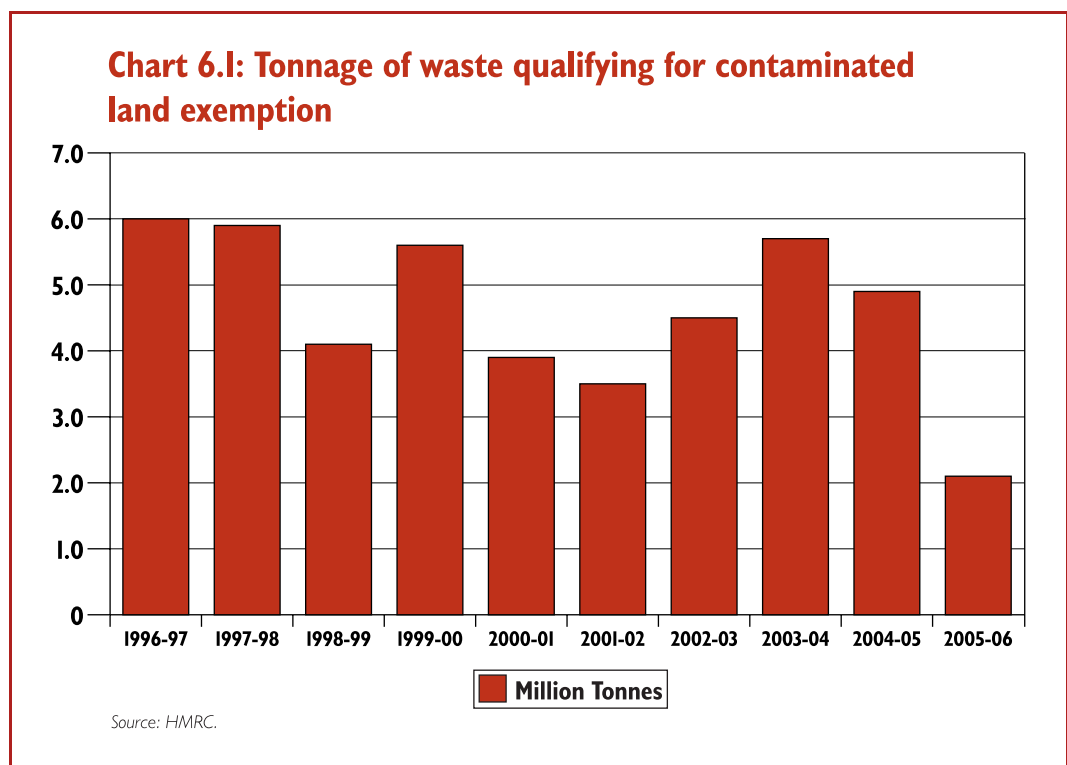
Questions on Chapter 5

- What is the incidence of Japanese Knotweed on development sites at present?
- To what extent is Japanese Knotweed a barrier to development?
- What in practice are the costs associated with its removal?
- What types of treatment have in practice been most cost effective?

6

LANDFILL TAX AND THE CONTAMINATED WASTE EXEMPTION

6.1 Landfill tax was introduced in 1996. It is a tax on the disposal of waste collected by landfill site operators. It aims to encourage waste producers to produce less waste, recover more value from waste, for example through recycling or composting and to use more environmentally friendly methods of waste disposal. The tax is administered by HM Revenue and Customs and guidance is available on their website¹. There are some exemptions from landfill tax, and the exemption that is most relevant to brownfield developers is that relating to waste arising from the clearing of contaminated land. This exemption currently applies to about 2 million tonnes of waste a year. Following the implementation of the hazardous waste directive in 2005 there has been a fall in the amount of waste qualifying for the exemption. Chart 6.1 shows the tonnage of waste qualifying for the exemption for financial years since landfill tax was introduced.



6.2 The exemption for waste from contaminated land is intended to ensure that landfill tax is not a barrier to developing contaminated sites. When it was introduced the Government accepted industry representations that it was necessary to ensure that development was not deterred. In 1996 there were few alternatives to landfill for contaminated land waste, but since then new technologies have emerged and on site decontamination has become the preferred solution for many development projects. It is generally accepted that on site clean up can give good environmental results and is in many cases a preferable environmental solution to landfill.

6.3 In 1996 the standard rate of landfill tax – that applying to all active waste, including from contaminated land – was set at £7 a tonne. It has been increased in stages and will reach £24 a tonne on 1 April 2007.

¹ www.HMRC.gov.uk

6.4 The regulatory environment has also changed since 1996. The Landfill Directive has introduced new rules on managing waste. From 30 October 2007 all waste will have to be treated before it can be sent to landfill and liquid waste will be banned from landfill. The implementation of the Hazardous Waste Directive in 2005 has also applied increased controls to hazardous waste, with the consequence that the price paid to landfill hazardous waste has risen sharply. Landfill tax would now only be a small proportion of the overall costs of land filling hazardous waste.

6.5 The Government encourages the remediation of contaminated soils and other materials in preference to their disposal to landfill because:

- it reduces the demand for landfill space;
- it reduces the environmental impact of transporting the waste to an approved landfill site; and
- it secures recycling of materials.

6.6 The Government recognises that the environmental benefits of treatment technologies will vary depending on both the contamination in question and the location of the contaminated site. Treatment technologies may not be a solution in every circumstance and therefore landfill will continue to have a role.

6.7 However the landfill tax exemption only provides support to those who decide to landfill waste from contaminated land. The Government believes there is a case to examine whether this is the most efficient use of funds for all developments with contaminated land. For example, if the exemption were ended and tax raised channelled into enhancements to land remediation relief there may be a case to remove the exemption, and this could provide better overall support for the costs of remediating contaminated land.

6.8 There may also be deregulatory benefits in removing the exemption as claims can have significant costs associated with them.

6.9 If the decision were taken to remove the landfill tax exemption for waste from contaminated land relief there would be the potential to affect some projects currently under way. The Government therefore seeks views of consultees on how best to minimise the regulatory impact of ending the exemption and for how long relief might be continued for existing developments.

Questions on Chapter 6

- Would Government support for the clean up of contaminated land be more effectively delivered through enhancements to land remediation relief rather than the existing exemption from landfill tax for waste from contaminated land? If not, why not?
- What measures would minimise the regulatory impact of ending the landfill tax exemption?
- How long should the landfill tax exemption continue for existing developments?
- What factors would determine activities which required a longer time to adapt to the removal of the exemption?

7

ISSUES FOR CONSULTATION

Summary of responses sought

7.1 The Government welcomes the views of stakeholders on all of the issues raised in this consultation document and any wider issues relating to the best way to provide Government help for the costs of redeveloping brownfield land. A number of specific issues were raised in each chapter, a full list of which is included below. Responses are welcome on any or all of the following questions.

- Chapter 2**
- Are there any other qualifying criteria for long-term derelict sites that should be explored?
 - What costs represent a barrier to the development of long-term derelict land and would be suitable for inclusion in any extension of land remediation relief to long-term derelict land?
 - Are there categories of expenditure that should be excluded?
- Chapter 3**
- Would the introduction of a planning permission condition be the most effective way to target relief more closely on development?
 - Would there be benefit from applying any additional conditions?
 - What are the practical difficulties associated with this approach?
- Chapter 4**
- Is it possible to accelerate relief whilst ensuring that the tax system is not open to abuse?
 - If the availability of land remediation relief is not factored into financial planning, what additional certainty could be given to ensure that it is?
- Chapter 5**
- What is the incidence of Japanese Knotweed on development sites at present?
 - To what extent is Japanese Knotweed a barrier to development?
 - What in practice are the costs associated with its removal?
 - What types of treatment have in practice been most cost effective?
- Chapter 6**
- Would Government support for the clean up of contaminated land be more effectively delivered through enhancements to land remediation relief rather than the existing exemption from landfill tax for waste from contaminated land? If not, why not?
 - What measures would minimise the regulatory impact of ending the landfill tax exemption?
 - How long should the landfill tax exemption continue for existing developments?
 - What factors would determine activities which required a longer time to adapt to the removal of the exemption?

Closing date and address for responses

7.2 The closing date for this consultation is Thursday 14th June 2007. Responses to the consultation should be sent either by post to:

Land remediation relief and landfill tax consultation
Room 2-32
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Or Email: jamil.mohamed@hm-treasury.gsi.gov.uk

7.3 A summary of responses to the consultation will be published in due course and responses to this consultation will be used to inform Government policy.

About the consultation process

7.4 This consultation has been conducted in accordance with the consultation criteria in the Cabinet Office Code of Practice. If you wish to access the full version of the Code, you can obtain it at:

<http://www.cabinet-office.gov.uk/regulation/Consultation/code/index.asp>

THE CONSULTATION CRITERIA

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about who may be affected, what questions are being asked, and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

7.5 If you feel that the consultation does not satisfy these criteria, or if you have any complaints about the process, please contact:

Duncan Calloway
Better Regulation Unit
020 7147 2389 or duncan.calloway1@hmrc.gsi.gov.uk

Confidentiality Disclosure

7.6 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

7.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

7.8 The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

A

PARTIAL REGULATORY IMPACT ASSESSMENT

PURPOSE AND INTENDED EFFECT OF MEASURES

Policy Objective

A.1 This partial regulatory impact assessment examines proposals to reform land remediation relief and the exemption from landfill tax for waste from the clearing of contaminated land. Reform of these tax reliefs aims to improve targeting of help to developers of hard to remediate sites whilst at the same time providing better environmental outcomes.

A.2 The reform package is intended to support other measures, particularly the commitment to increase housing supply and to respond to proposed changes to business rates aimed at improving the fiscal incentives for efficient use of urban land. The Government would not implement changes arising from this consultation earlier than 2008.

Background and rationale for Government intervention

A.3 Contaminated land is subject to obligations under the Environmental Protection Act 1990. Lord Rogers Urban Task reported in 1999 and the Government responded with the Urban White Paper in 2000, recommending that additional tax relief should be given to help developers decontaminate contaminated land. Land remediation relief, providing a 150% corporation tax relief was introduced in 2001. Kate Barker's 2004 Review of Housing Supply recommended that the relief should be extended to long-term derelict land, as long as the extra public money levered into the market would encourage genuine new investment in brownfield remediation, and not simply subsidise development that would take place anyway.

A.4 Proposals for reforming business rates on empty property and vacant land will introduce fiscal incentives for bringing unused land back into use. Land remediation relief reform can provide a channel for increased Government support through the tax system to return to productive use properties and vacant land that suffer from contamination or features of long-term dereliction.

A.5 Current legislation for land remediation relief is contained in Schedule 22 of the Finance Act 2001 and for the landfill tax exemption for waste from contaminated land in Sections 43A and 43B Finance Act 1996.

A.6 Other Government departments with an interest are the Department for Communities and Local Government through their policy responsibility for planning law and development and the Department for Environment Food and Rural Affairs in relation to waste and the environment.

Consultation

A.7 The partial regulatory impact assessment forms part of the formal consultation on tax reliefs for brownfield land. Comments are welcomed on the likely regulatory impact of the proposals.

OPTIONS

Option 1: “Do nothing”

A.8 Leaving the current system unchanged would mean there was no additional regulatory burden.

A.9 It would however mean that the land remediation relief would continue to lack targeting and would not be available for cleaning up Japanese Knotweed or long-term derelict land.

A.10 It would also mean that the landfill tax exemption for contaminated land would continue, and as landfill tax rates rise there would continue to be an increasing incentive to send to landfill waste from contaminated land whereas other waste, much of it less polluting, would continue to be taxed at the standard rate. The tax system would also continue to encourage landfill solutions for contaminated land instead of on site clean up, which can have better environmental outcomes.

Option 2: Extension of land remediation relief to long-term derelict land

A.11 The extension of land remediation relief to long-term derelict land would apply to specific expenditure incurred on long-term derelict sites. The consultation proposes that dereliction could be generally defined and could qualify if it has been vacant and unused since a fixed date in the past. Evidence from the National Land Use Database for England and similar databases would be accepted as evidence of the status of the land, but any land could meet the tests whether or not it was on the database. Setting a fixed date in the past avoids the problem of development being postponed until it can qualify.

A.12 There is a risk that it might not be possible to identify whether particular land counts as derelict. However the tax relief will be self-assessed and ascertaining the availability of the relief is unlikely to be a significant burden.

A.13 There is also a risk that insufficient clarity will be available about the types of qualifying expenditure qualifying for relief. This can be resolved through the consultation process.

A.14 A possible unintended consequence is that development on qualifying long-term derelict sites will be encouraged instead of those which have not been derelict for so long. The proposal makes an assumption that the social good in remediating a site is correlated to the length of time it has been derelict.

A.15 Compliance and monitoring of this option (and the other corporation tax options below) would be through the corporation tax self assessment process.

Option 3: Focusing on development

A.16 This option would remove land remediation relief from some taxpayers who can at present qualify, but would allow resources to be more accurately targeted at development. It would bring the relief more in line with the Government’s statement in 2001 that the relief was intended to help developers.

A.17 The type of expenditure which would not qualify under this option is the clean up of land for regulatory (for example health and safety reasons) which could currently

qualify for relief, (as long as the land was not polluted by the current owner in the first place) where no redevelopment requiring an application for planning permission is needed.

A.18 As expenditure would have to be pursuant to a planning requirement this change could encourage taxpayers to ensure that planning authorities stipulate clear conditions in relation to contamination and dereliction. This may possibly mean that planning authorities may incur some additional burden in granting planning permission.

Option 4: Timing of land remediation relief

A.19 This option would accelerate the availability of land remediation relief to companies by allowing claims to relief to depart from standard accountancy rules.

A.20 There is a risk that accelerating the relief could lead to a loss of tax revenue if developers claiming the repayable tax credit cease trading before recognising the profits at the end of the development.

A.21 This risk would be difficult to mitigate within the self-assessment system for corporation tax.

Option 5: Extension to Japanese Knotweed

A.22 This option would allow expenditure on removal of Japanese Knotweed as part of the development process to qualify for enhanced tax relief.

A.23 There is a risk that the costs of removing Japanese Knotweed are far greater than expected which could limit the Government's scope to help in the long-term. The consultation therefore seeks to explore the costs with consultees in more detail

Option 6: Ending the exemption from landfill tax for waste from clearing contaminated land

A.24 This option would remove an existing distortion in the tax system whereby "dig and dump" is subsidised through the landfill tax exemption and on site clean up is not. Currently both landfill costs and on site clean up costs can qualify for land remediation relief at the enhanced 150% rate, but dig and dump qualifies for the additional help of the landfill tax exemption. Removing this exemption would remove the distortion and the additional funds could be recycled into improvements in land remediation relief such as those covered in this consultation. However, the exemption is currently available for all who remove waste from contaminated land but under the options covered by the consultation some taxpayers who are entitled to claim the exemption will not be able to claim land remediation relief. There may, for example, be some sites where on site remediation is not a viable option.

A.25 Removing the exemption risks affecting some large sites where considerable amounts of contaminated land waste needs to be removed quickly. The impact of this can be mitigated through transitional rules, which are the subject of the consultation.

A.26 Ending the exemption would not have any compliance or monitoring impacts.

COSTS AND BENEFITS

Sectors and groups affected

A.27 The proposals have the potential to affect those carrying out development on contaminated and derelict land. This includes:

Private Sector

- Property developers, including landowners, developing their own property investments with planning applications
- construction industry and services
- landfill site operators
- landowners who remove contamination from land and are not developing it.

Public Sector

- Central Government
- planning authorities (indirectly).

Benefits

A.28 Government help through the tax system will be targeted more closely on developers allowing funds to be recycled into hard to remediate sites. It should encourage development on brownfield land, supporting Government targets, the National Brownfield Strategy and similar programmes in Scotland, Wales and Northern Ireland.

A.29 There are also environmental benefits in discouraging dig and dump and encouraging on site remediation as well as encouraging developers to clean up Japanese Knotweed and dereliction.

A.30 On site decontamination may offer better environmental results overall than using landfill as it can reduce environmental externalities such as transportation.

A.31 Economic benefits accrue from bringing vacant and derelict land back into use. It can create jobs and homes and regenerate towns and cities.

A.32 Discouraging dig and dump will encourage technologies and techniques for on site remediation. Providers of these services will benefit and many are small and medium sized enterprises.

A.33 Ending the landfill tax exemption for clearing contaminated land would have a deregulatory benefit for developers, who currently have to send extensive documentation to HM Revenue and Customs to obtain the exemption certificate. It would also reduce HM Revenue and Customs' administrative costs and deregulate landfill site operators to a minor extent by removing their need to be satisfied that the waste is certified as exempt.

A.34 Direct benefits will accrue to those incurring expenditure on developing land where Japanese Knotweed or dereliction is present.

Costs

A.35 The measures proposed, if all implemented, would increase overall help for many developers but would reduce tax help for those not undertaking development, or returning damaged land to beneficial use. It will therefore lead to additional costs on those taxpayers.

A.36 Removing the landfill tax exemption could potentially encourage alternatives such as use of exempt sites and illegal activity such as hiding waste by mixing it with clean soil.

A.37 Limiting the land remediation relief to planning permission could possibly increase costs associated with planning permission if additional negotiations were needed to ensure that the conditions would allow land remediation relief to be claimed.

SMALL FIRMS IMPACT TEST

A.38 The proposals will have some impact on small businesses. The Government welcomes the opportunity given by consultation to gather evidence on this aspect.

COMPETITION ASSESSMENT

A.39 The proposals do not appear to have any direct competition impacts but the Government welcomes the views of stakeholders on this issue.

ENFORCEMENT, SANCTIONS AND MONITORING

A.40 Land remediation relief is a corporation tax relief which is monitored by HM Revenue and Customs as part of its ordinary self-assessment compliance processes. HM Revenue and Customs also administer landfill tax and the exemption for waste from contaminated land.

B

DESCRIPTION OF LAND REMEDIATION RELIEF

OUTLINE OF LAND REMEDIATION TAX RELIEF

Introduction

B.1 Where a company subject to corporation tax acquires land in a contaminated state for the purpose of its trade or property-letting business this tax relief enables an enhanced deduction from taxable profits to be claimed for qualifying expenditure provided certain conditions are satisfied.

B.2 Where the enhanced expenditure creates or increases a loss, the company may be able to surrender part of the loss for a payable credit. The credit is not treated as taxable income.

B.3 This Annex provides an outline of the relief. Full details are available in HM Revenue & Customs' Corporate Intangibles Research & Development (CIRD) manual which can be found on the internet at: <http://www.hmrc.gov.uk/manuals/cirdmanual/CIRD60000.htm>.

B.4 There are special provisions that apply to insurance companies carrying on life assurance business but these will not be discussed here. For information on this see HM Revenue and Customs' Life Assurance Manual (LAM) <http://www.hmrc.gov.uk/manuals/lammanual/lam2000.chm> (in particular LAM 4A.123, 6.111 and 12.24A).

Operation of the relief

B.5 The relief operates by allowing a company to:

- claim 150% relief for qualifying land remediation expenditure;
- elect that capital expenditure on qualifying land remediation expenditure is allowed as a deduction in computing its profits; and
- receive a payable tax credit in exchange for any qualifying land remediation loss surrendered to the Exchequer - the rate of the payable tax credit is 16% of the loss surrendered.

B.6 The company has six years from the end of its accounting period to make a claim for the relief and two years from the end of its accounting period to make a claim for a payable credit or an election to treat capital expenditure as deductible in computing profits. A claim for a payable credit must be made in a corporation tax return.

B.7 For capital expenditure, in respect of which an election has been made, relief is available in the accounting period in which the expenditure is incurred.

B.8 Where expenditure is revenue in nature, the computation of the deduction in arriving at profits is made in accordance with Generally Accepted Accounting Practice.

B.9 The qualifying land remediation loss is the lesser of:

- 150% of the qualifying land remediation expenditure; and

- the unrelieved trading loss or property letting loss for the period.

Conditions to be satisfied

B.10 The company must have acquired an interest in the land in a contaminated state and have incurred qualifying land remediation expenditure after 11 May 2001. If the company or a person with a relevant connection to the company is responsible for the land being in a contaminated state then no relief is available. Relief is not available for expenditure on remediating nuclear sites, nor if a capital allowances claim could be made in respect of the expenditure.

Contaminated state

B.11 Land is in a contaminated state if, and only if, substances in, on or under the land are causing:

- harm, or there is the possibility of them causing harm; or
- the pollution of controlled waters, or the possibility of their pollution.

B.12 Land means any estate, interest or rights in or over land. Buildings are regarded as part of the land so expenditure on remediation of contamination in buildings can qualify. If for example an asbestos roof that was in good order was to be replaced, the qualifying costs of removal would attract the relief but the cost of a replacement roof would not qualify.

B.13 A substance is defined as any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour. Hydrocarbons in the soil that have leached from petrol storage tanks are a substance as is asbestos in insulation material in a building. Rats infesting the building are animals and not a substance.

B.14 Harm means harm to the health of living organisms, interference with ecological systems of which living organisms form part, or damage to property.

Qualifying land remediation expenditure

B.15 Qualifying land remediation expenditure means expenditure that meets the following five conditions. The expenditure:

- is on land all or part of which is in a contaminated state;
- is on relevant land remediation directly undertaken by the company or on its behalf;
- is incurred on employee costs and materials, or is qualifying expenditure on sub-contracted land remediation;
- would not have been incurred had the land not been in a contaminated state; and
- is not met directly or indirectly by another party and is not subsidised.

Relevant land remediation

B.16 Relevant land remediation means activities whose purpose is to prevent, minimise, remedy or mitigate the effects of, any harm, or pollution of controlled waters, or to restore the land or polluted waters to their former state. The activities include the

carrying out of any works, operations, or the taking of any steps in relation to the land acquired in a contaminated state, any controlled waters affected by that land, or any land adjoining or adjacent to that land. Preparatory work may also qualify where its purpose is to assess the condition of the land acquired, controlled waters affected by the land, or any adjoining or adjacent land, if the preparatory work is connected to activities that would qualify, and such activities are actually undertaken by the company.

Employee costs

B.17 The relevant employee costs are those paid to, or in respect of, directors or employees directly and actively engaged in the relevant land remediation. This includes:

- all salaries, wages, perquisites and profits whatsoever, paid to directors or employees, but does not include benefits in kind;
- secondary Class 1 national insurance contributions paid by the company; and
- contributions paid by the company to any pension fund (within the meaning of ICTA88/S231A (4)) operated for the benefit of directors or employees of the company.

B.18 Employees who only provide secretarial or administrative services in support of those directly and actively engaged in relevant land remediation are not considered to be actively and directly engaged in relevant land remediation activities. Where a director or employee is directly and actively engaged in relevant land remediation for only part of their time, the following rules apply:

- If the time spent is less than 20% of their total working time in an accounting period, then none of the employee costs are treated as attributable to relevant land remediation.
- If the time spent is greater than 80% of their total working time in an accounting period, then all of the employee costs are treated as attributable to relevant land remediation.

B.19 In all other cases an appropriate proportion of the employee costs are to be treated as attributable to relevant land remediation. Expenditure on materials is the cost of materials used directly in relevant land remediation.

Subcontracted land remediation

B.20 Subcontracted land remediation expenditure is amounts of expenditure incurred in contracting out relevant land remediation to someone else. There are restrictions on the amount that can be claimed if the subcontractor is connected to the company incurring the expenditure.

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