

# **Tax incentives for development of brownfield land: a consultation response**

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December 2007



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brownfield land:  
a consultation response**

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# INTRODUCTION

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**1.1** The Government is committed to a step change in housing supply. It has set out an ambition to increase housing supply by at least 240,000 net additional homes per year by 2016. At the same time, it is committed to maintaining a high proportion of development on brownfield sites.

**1.2** The Barker Review of housing supply in 2004 recommended that land remediation relief (a relief from corporation tax) should be extended to promote the remediation of long-term derelict sites. The Barker review of land use and planning (2006) recommended that the Government should consult on how reform of land remediation relief to encourage new development on hard to remediate sites.

**1.3** On 19 October 2007 the Government published a summary of consultation responses to the consultation document published at Budget 2007 entitled *Tax incentives for development of brownfield land*. The consultation discussed proposals for reforms to land remediation relief in four areas:

- Long term derelict land;
- Improving development focus of land remediation relief;
- Speed and certainty of land remediation relief; and
- Japanese Knotweed.

**1.4** The consultation also considered the future of the landfill tax exemption for waste from contaminated land.

**1.5** We have examined all of the consultation responses and had further discussions with key stakeholders.

**1.6** This document provides the Government's response to the Budget 2007 consultation. We would welcome feedback on the plans outlined in this document.



# 2

## THE GOVERNMENT'S RESPONSE

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### **The Challenge of Long-Term Derelict Land**

**2.1** The Budget 2007 consultation document *Tax incentives for development of brownfield land* said that the Government was considering extending land remediation relief to provide additional help for remediating long-term derelict land where derelict works, buildings and structures were a barrier to development. The intention would be to provide relief at the enhanced 150 per cent rate for certain expenditure on long-term derelict sites, thereby improving their economic viability and helping land owners bring them back into use.

**2.2** Overall respondents were supportive of the proposal to extend the availability of land remediation relief to long-term derelict sites and to the proposed definition of derelict land as “Land or buildings so damaged by previous development that it is incapable of beneficial use without treatment”. This definition is from the Derelict Land Grant Act of 1981. Subject to legal advice on the precise definition of the words, whether the definition works in all of the devolved administrations, and on the issue of State Aid, the Government is minded to ensure that if the land is within the UK and meets the requirement of a definition set out in primary legislation and based on the definition in the Derelict Land Grant Act then claimants would be able to access the relief.

**2.3** The DLGA definition is equivalent to category C land in the National Land Use Database of Previously Developed Land and Buildings (NLUD-PDL) in England. HM Revenue and Customs (HMRC) will be looking to see if it can accept being on the NLUD-PDL – or the Scottish Vacant and Derelict Land (SVDL) survey – as evidence of the status of the land. There would, however, be no legal requirement to be on one of these databases, provided the land fell within the statutory definition.

### **Defining ‘Long-Term’**

**2.4** To ensure the relief does not subsidise development that would have taken place in any case the Government is minded to limit the relief to land that has met (continuously) the above definition of dereliction since 31 March 1998. The responses to the consultation provided mixed views on this qualifying date, but the Government is confident that a qualifying date of 31 March 1998 is consistent with the aim of providing assistance to derelict land that would not otherwise come back into use. Of the 15,000 hectares of derelict land in England recorded by local planning authorities in their returns to the National Land Use Database Survey in 2006 (category C), approximately 10,000 hectares have been on the database since 1998.

**2.5** The Government is minded to take powers in primary legislation that allow the date to be amended by a Treasury Order. This will allow the Government to review the qualifying date – as and when it deems necessary – in light of the amount and location of land that is qualifying for the relief.

### **Polluter Pays Principle**

**2.6** In keeping with the Polluter Pays principle the Government is also minded to exclude from the scope of the relief land that did not fall within the statutory definition of dereliction when it was acquired by the present owner.

### **Qualifying Expenditure**

**2.7** The consultation document suggested that relief could be available for expenditure on: demolition and removal of existing structures, buildings or other works; removing or making good obsolete infrastructures such as electricity, water,

sewerage or gas; creating adequate access to the site; and fees and other costs directly related to the above. The vast majority of respondents were content with the expenditures identified.

**2.8** To ensure that the relief is targeted the Government intends to restrict it to:

- specific items of expenditure that are directly linked to the derelict site;
- items of expenditure that are only required on derelict sites; and
- items of expenditure which are of such a scale as to present a genuine blockage to development.

**2.9** This list of qualifying expenditure will be contained in secondary legislation to make it easier to review over time. Subject to the contents of legal advice on whether providing support to any of these pieces of expenditure would constitute state aid, and feedback from this document, the Government is minded to include the following inside the scope of the relief:

- **Removal of post tensioned concrete heavyweight construction** (post tensioning is usually employed where stressing is to be carried out on site after casting an in-situ component, or where a series of pre-cast concrete units are to be cast together to form the required member);
- **Removal of building foundations and machinery bases;**
- **Removal of reinforced concrete pilecaps** (piles are long slender columns composed of solidified concrete grout constructed in the ground to carry a vertical load and pilecaps are structures, normally square or rectangular, of a thickness which combine piles in groups to support singular columns above);
- **Removal of reinforced concrete basements** (removal can require significant and expensive stability works such as underpinning and propping);
- **Below ground demolition of redundant services;** and
- **Fees directly related to the above items of qualifying expenditure.**

### **Focusing on Development**

**2.10** When land remediation relief was introduced in 2001 the Government said that it was intended to improve the viability of development on contaminated sites. Chapter 3 of the consultation document therefore consulted on whether there was scope to improve the targeting of land remediation relief by restricting the instances in which it could be claimed to those where some form of planning consent had been obtained.

**2.11** The Government received mixed responses to this question. The Government has continued to explore this issue and believes that a link to planning permission is neither necessary nor desirable. It is not necessary since remediation is rarely carried out in instances where it does not lead to development. It is not desirable, because it might risk excluding from the relief remediation carried out prior to the pursuit of planning permission.

**2.12** Instead, the Government is minded to improve the targeting of the relief by excluding from the relief work carried out under statutory obligation, for example obligations imposed under or pursuant to:

- section 215 of the Town and Country Planning Act 1990 for land/buildings adversely affecting the amenity of neighbourhood;
- sections 76 – 79 of the Building Act 1984 for defective premises, dangerous buildings, ruinous and dilapidated buildings and neglected sites;
- section 29 of the Local Government Act 1982 for work on unoccupied buildings;
- sections 79-82 of the Environment Protection Act 1990 for abatement or prohibition of a nuisance; and
- listed buildings legislation such as Repairs and Urgent works notices.

**2.13** The Government will work with the devolved administrations to ensure that the principles underlying this approach are applied consistently throughout the UK”.

### Timing and Certainty of the Relief

**2.14** The consultation document reported that the Government would like land remediation relief to be available as quickly as possible, but recognised that it was prudent for compliance purposes to have the company accounts and tax computation available before any tax credit was paid. It follows therefore that there is likely to be some delay between the incurring of expenditure and delivery of the relief. Indeed, although there was general support for the proposal to make payment of the credit available earlier in the development process, respondents recognised the difficulties involved in accelerating a corporation tax relief. The Government will continue to consider if it is possible to accelerate the timing of the relief whilst ensuring that the tax system is not open to abuse.

**2.15** The consultation document also referred to evidence that the relief was not always factored into plans from the start of a development and asked what steps could be taken to ensure that financial planning for development projects took full account of availability of relief from the start. Respondents to the consultation made two key suggestions to address this:

- More and better publicity for the relief as many developers were not aware of their right to claim it; and
- More detailed guidance on the types of costs that qualified for the relief.

**2.16** In light of the responses to the consultation the Government is minded to take a number of steps to improve the certainty of this relief. In particular, HMRC will be considering how to improve guidance and what mechanisms could be used to ensure that the relief is better publicised. This should help to ensure that financial planning takes full account of the relief from the start.

### Japanese Knotweed

**2.17** Chapter 5 of the consultation document looked at whether it was appropriate to extend the scope of land remediation relief to cover expenditure on removing Japanese Knotweed. This suggestion received overwhelming support from respondents to the consultation document, who cited Japanese Knotweed as a major barrier to development.

**2.18** Respondents stated that there are broadly two ways of removing Japanese Knotweed from a site:

- On site or off site treatment methods, which can take up to 5 years; or
- By physical removal to an authorised landfill site.

**2.19** Although it takes longer than physical removal to an authorised landfill site, responses to the consultation showed that on-site or off-site treatment offers the most cost effective way of removing Japanese Knotweed. On-site or off-site treatment is also the most sustainable and effective approach. It ensures that all of the weed is killed and unable to return thus reducing longer-term costs, and does not encourage the unsustainable use of landfill.

**2.20** The Government intends to extend land remediation relief to expenditure incurred on the removal of Japanese Knotweed, excluding removal to a landfill site. The Government believes that giving relief to the treatment of Japanese Knotweed will help to bring more land forward for development.

**Landfill Tax  
Exemption for  
Contaminated  
Waste**

**2.21** Landfill tax was introduced in 1996 and is a tax on waste disposed of at authorised landfill sites in the UK. Waste from cleaning up contaminated land has been exempt from landfill tax since the tax's introduction. The intention was to ensure that landfill tax did not become a barrier to development on contaminated sites. The consultation suggested ending this exemption to encourage on-site or off-site remediation, an option that was not widely available when landfill tax was introduced.

**2.22** The consultation also asked whether Government support for the clean up of contaminated land would be more effectively delivered through enhancements to land remediation relief rather than the existing exemption from landfill tax for waste from contaminated land. The majority of industry respondents agreed that the continued subsidy of the least sustainable approach to remediation, "dig and dump", is not consistent with Government's, nor industry's, sustainability objectives and that Government support would be better linked to land remediation relief.

**2.23** Should the Government decide to proceed with the abolition of the landfill tax exemption it will do so by secondary legislation and is minded to make transitional arrangements as follows:

- A deadline of 30 November 2008 for receipt of applications for exemption certificates;
- All certificates granted after a Budget 2008 announcement would have an end date of 31 March 2010 recorded on them and legislation laid in Autumn 2008 would ensure that all certificates, including those issued prior to the Budget 2008 announcement, would cease to have effect after 31 March 2010; and
- Waste disposed of to landfill on or after 1 April 2010 would not be entitled to the contaminated land tax exemption.

**2.24** The Government will explore these proposed transitional arrangements with interested parties. The Government remains committed to ensuring that the overall support for the remediation of hard to remediate sites is not less after reform than it is at present.

# 3

## NEXT STEPS

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**3.1** The Government is minded to consult on draft legislation on land remediation relief and to publish an updated partial Impact Assessment in the New Year. It will consult on the draft secondary legislation relating to the changes for landfill tax in summer 2008.

**3.2** The Government will make a further announcement in Budget 2008.

**3.3** In the meantime, the Government would welcome feedback on the plans outlined in this document.

**3.4** Feedback on this document should be addressed to:

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