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Date 12 July 2023

Dear Kate

Thank you for your submission "*Uncertainties in relation to Structures and Buildings Allowances*" which you emailed on 15 March 2023. I provided you with a full reply on 02 June 2023. This letter is by way of a more formal response following your request to publish.

In the first instance it may be worth highlighting that guidance for the Structures and Buildings Allowance (SBA) is available at [Claiming capital allowances for structures and buildings - GOV.UK \(www.gov.uk\)](http://www.gov.uk). There is further detailed guidance available in HMRC's Capital Allowances manual starting at page reference [CA90000](#).

SBA was introduced by section 30 Finance Act 2019 and provides relief, available from 29 October 2018, for qualifying capital expenditure incurred on the construction, renovation or conversion of commercial buildings.

In your submission of 15 March 2023, you outlined three broad areas in which you considered there to be a certain level of uncertainty as to how to apply the legislation to specific sets of facts. The three areas detailed in your submission are headed '*Pre-29 October 2018 site clearance/preparation*', '*Framework agreements – commencement provisions*' and '*Qualifying use*'.

I have not reproduced the full detail of your submission in this reply and so, in publishing this reply, it will need to be done so alongside the full text of your original submission in order to provide context.

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1. Pre-29 October 2018 site clearance/preparation

- 1.1. At 2.6 you say that “*The final legislation does not include the ‘connected preparatory contract’ provision*” as was part of the draft legislation at 270AB (3) & (4). The 4 sub-sections of the draft 270AB have effectively been rolled up into the single paragraph that forms the final wording of the legislation at 270AB. Whilst the final legislation does not specifically refer to a ‘connected preparatory contract’ such a concept is implicit in the use of the phrase “*if any contract for works to be carried out in the course of the construction of that particular building...*”. A ‘connected preparatory contract’ would be included in such a description.
- 1.2. It’s possible to demonstrate how the legislation works in practice at the extremes. A developer buys a site with no clear intention as to what to ultimately do with the site, clear and sell, clear and construct dwellings, clear and construct shopping precinct. If, at the outset, expenditure is incurred on clearing the site and then it is left empty until such time that the developer decides how he is to proceed, then the site clearance is unlikely to determine the commencement date for SBA purposes. The site has not been cleared in the ‘*course of construction*’ of a particular building. On the other hand, if the developer buys a site, has plans drawn up and obtains planning permission for those plans and then clears the site, then the clearing of the site is likely to determine the commencement date for SBA purposes. There is a clear and direct link of the site clearance being part of the process in constructing a planned building. It is a cost incurred in the ‘*course of construction*’ of a specific building or buildings.
- 1.3. At CA90200 we say, “*Construction is treated as beginning before 29 October 2018 if any contract for works to be carried out in the course of the construction of that particular building is entered into before that date.*” This mirrors the wording of the legislation and the term “*works to be carried out in the course of the construction*” is clearly wide enough to extend to site clearance, where that is carried out for the specific building. Even if it were not wide enough, it is further covered by 270BK which makes it clear that capital expenditure incurred for the purposes of preparing land as a site for the construction of the building is treated as the capital cost of construction of that building and is determinative for the commencement date pertaining to 270AA(1)(a) and 270AB.
- 1.4. Where a site is cleared, including the demolition of existing buildings, but there are no specific plans, at that time, to construct a specific new building(s) then the site clearance costs do not fall with 270BK, they are not treated as if they were incurred on the construction of any building that may eventually be built on that site and they do not trigger the commencement date for SBA purposes.
- 1.5. Capital allowance claims are determined on their facts, and thus any guidance necessarily limited in its scope. However, we will certainly look at ways to ensure the more common approaches are noted.
- 1.6. Whilst an example may be helpful, there are clearly a broad spectrum of possibilities and so an example of one particular fact pattern may not be particularly useful to the many cases that would have different fact patterns. HMRC’s capital allowances manual may benefit from additional guidance for clarity on how to apply the legislation, whilst leaving each case to be judged on its own, unique, set of facts.

2. Framework agreements – commencement provisions

- 2.1. A *'framework agreement'* could be akin to a Master Service Agreement, i.e. setting out the broad commercial terms between the parties, with a separate instruction to build at a later time. It would be necessary to consider the precise terms of such an agreement.
- 2.2. If the framework agreement includes instructions to build specific buildings or structures, then the framework agreement may establish the commencement date for SBA purposes. On the other hand, if the framework agreement merely establishes the general terms to be followed by any subsequent contract for construction, without any obligation or expectation that a specific structure or building is to be constructed, then it is unlikely to establish the commencement date for the purposes of the SBA. In such a scenario, it would most likely be the subsequent *'instruction to build'* that would constitute the relevant contract for SBA purposes. Such an instruction to build does not need to be in writing, oral contracts are also within the scope of the SBA rules.


3. Qualifying use

- 3.1. At 4.2 you say *"CA92100 (Structures and buildings allowance (SBA): use: qualifying use) refers only to first use of a building not a structure."* I think it is worth pointing out that at CA90010 HMRC's capital allowances manual says, *"In the SBA part of this guidance all references to a 'building' include a 'structure or building'."* In using the term *'building'* at CA92100 the manual is referring to a *'building or structure'*.
- 3.2. In response to the uncertainty at 4.3. The inference is that the property investor is purchasing the whole site, inclusive of access roads and infrastructure over which they have ownership. The property investor's qualifying activity is that of *'income from property'*. The property investor has paid a capital sum for the relevant interest, that capital sum is the SBA qualifying expenditure – section 270BD CAA01. In the first instance I wonder how likely it is in practice that the access roads and utility infrastructure, leading up to the buildings, would remain in the ownership of the developer and then passed on, upon purchase, to the property investor? I expect it is more likely, in most cases, that such infrastructure would be adopted by the local authority and utility provider. In circumstances where the property investor does not hold the relevant interest in the roads and/or utility infrastructure then there is no claim to SBA.
- 3.3. In circumstances where ownership may be retained by the developer and, subsequently, the property investor who purchases the site, I make the following observations.
- 3.4. If some of the expenditure incurred by the developer relates to assets not within the boundary of the land owned by the property investor, then there is no relevant interest for the property investor for this expenditure so no SBA claim.
- 3.5. Have the access roads and utility infrastructure, that are part of the site but not part of any particular property/building, been brought into use for the purposes of the qualifying activity, separate to any particular building being brought into use? The roads and utility services are fundamental to the generation of income from the building.
- 3.6. The road may be physically *"in use"* in providing access to the site, however until the property investor is entitled to rents, as per section 270CG CAA01, then it doesn't meet the legislative definition of qualifying use. The date for the commencement of

entitlement to SBA is when the building comes into use, unless the property company charges for use of the roads.

Thank you again for your submission and I trust this response has provided clarification on how to apply the legislation..

Yours sincerely


Capital Allowances – Technical Adviser