

## Land Remediation Relief

### Proactive submission by the Chartered Institute of Taxation

#### 1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

#### 2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

### 3 Introduction

- 3.1 Land remediation relief (LRR) was introduced in 2001 and subsequently amended by Finance Act 2009 following consultation<sup>1</sup>. The purpose of the relief was to provide a financial incentive to developers to bring land back into use that had been contaminated by previous industrial use or land containing derelict structures that would be prohibitively expensive to remove.<sup>2</sup> Secondary legislation specifies the types of qualifying expenditure in relation to derelict land remediation<sup>3</sup>.
- 3.2 LRR is available for the remediation of derelict land provided certain conditions are satisfied including that the land has been derelict throughout the period beginning with the earlier of **1 April 1998** or the date of acquisition of a major interest in the land by the claimant company or a connected party (CTA 2009 section 1147 (3)(b)).
- 3.3 This submission concerns one aspect of the LRR derelict land remediation scheme: the qualifying date of 1 April 1998 for land in a derelict state.
- 3.4 Our stated objectives for the tax system include:
- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
  - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
  - Greater certainty, so businesses and individuals can plan ahead with confidence.
  - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
  - Responsive and competent tax administration, with a minimum of bureaucracy.

### 4 Land in a derelict state – recommendation for review of fixed date

- 4.1 A derelict state is defined for the purposes of Land Remediation Relief in CTA 2009 section 1145A as meaning the land
- a) is not in productive use, and
  - b) cannot be put into productive use without the removal of buildings or other structures.

The Corporate Intangibles Research and Development Manual at CIR62030 indicates the type of evidence that will support the land having been derelict. The guidance notes that:

*There are a wide variety of sources of data that may show the history of a site.*

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<sup>1</sup> Consultation: Tax Incentives for development of brown-field land (March 2007)

<sup>2</sup> The abolition of 36 tax reliefs: December 2011 response to consultation ( see para 2.12 et seq. )

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/190281/condoc\\_responses\\_tax\\_reliefs.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/190281/condoc_responses_tax_reliefs.pdf) . Whether a site qualifies as derelict or contaminated are separate issues. Although in practice sites that are derelict are often contaminated as well for the purposes of Land Remediation Relief the two issues are dealt with separately.

<sup>3</sup> [The Corporation Tax \(Land Remediation Relief\) Order 2009](#).

*There may be articles in the local media about the site. These may relate to the closure of the previous businesses on the site, or about how the site has lain derelict since a particular business closed.*

*Insurance company data - was it insured other than as a derelict site?*

*Empty Property Business Rates - If business rates were paid then that is a pointer to the site not being derelict.*

*Evidence includes the estate agent's literature about the property. The estate agent may also be able to provide information as to when they were instructed and the state of the building at that time.*

The manual also references the English National Land Use Database (NLUD) at CIRD62020 and Scottish Vacant and Derelict Land Survey at CIRD62025. Whilst the Scottish database appears to be maintained and 2021 is the latest data available<sup>4</sup>, the most recent report located for NLUD data was published on 24 February 2006<sup>5</sup> suggesting this reference source may now be outdated. If the LRR section of the manual is to be reviewed more generally to ensure it is current and addresses some of the uncertainties in practice that provide potential barriers to claiming the relief, we would be pleased to contribute to the review, as we have previously indicated.

- 4.2 The qualifying date of 1 April 1998 was introduced by FA 2009. A Technical Note dated 24 November 2008 stated 'As the policy intention is to bring back into use derelict land that would not otherwise be remediated, the relief is limited to land that was derelict on 1 April 1998 and that has been continuously derelict since that date.' At the time it was introduced the look back period was therefore 11 years. It is now 24 years.
- 4.3 The rationale for the 1 April 1998 date is not entirely clear, whether it was always the intention the relief was effectively time-limited. If this is so, a clear policy statement to that effect would be helpful. However, the inclusion of a mechanism (as yet, unused) under CTA 2009 section 1147(3A) to amend the fixed date by secondary legislation is an apparent recognition that the requirement for land to have been derelict since 1 April 1998 could, over time, become too restrictive and fail to encourage significant redevelopment of derelict land.
- 4.4 An issue in practice is that providing confirmatory evidence of non-productive use over the last 24 years is very challenging as records are unlikely to have been retained throughout the whole of that extended period. Although evidence may be available for part of the period, evidence dating back to 1 April 1998 is often simply not available and therefore potentially prohibits a claim that in all other respects meets the qualifying conditions and the underlying policy intent. We note HMRC's own default document retention policy is limited to 6 years or 20 years in the case of documents with historic value<sup>6</sup>.
- 4.5 We suggest that in view of the time that has elapsed since the date of 1 April 1998 was fixed and given the practical difficulties in establishing non-productive use over a lengthy period, the date should be reviewed to ensure the relief is meeting its objective in bringing back derelict land into use that would otherwise not be remediated. Options might include :
  - 4.5.1 To change the date to 1 April 2012 (to restore the original 11-year position – assuming enactment in 2023), or

<sup>4</sup> [Scottish Vacant And Derelict Land Survey 2021 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>5</sup> [National land use database: land use and land cover classification - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>6</sup> [https://www.gov.uk/government/publications/hmrc-records-management-and-retention-and-disposal-policy/records-management-and-retention-and-disposal-policy#:~:text=4.1%20HMRC%20retention%20policy&text=The%20default%20standard%20retention%20period,current%20\(%2B%201\)%20accounting%20year.](https://www.gov.uk/government/publications/hmrc-records-management-and-retention-and-disposal-policy/records-management-and-retention-and-disposal-policy#:~:text=4.1%20HMRC%20retention%20policy&text=The%20default%20standard%20retention%20period,current%20(%2B%201)%20accounting%20year.)

- 4.5.2 to make it a relative date by requiring a site to be derelict for the earlier of 10 years (from the date works are commenced) or the date of acquisition in a derelict state. We recognise there could be a risk in this option if land is deliberately allowed to become derelict knowing ( or hoping) that relief may be available in say, 10 years' time, a result that would be contrary to the wider policy intent of encouraging derelict land back into use. We suggest that setting the time period for a long enough time should guard against this risk, and 10 years seems more than long enough to meet that objective while alleviating the record keeping challenges of the current 24 year period.
- 4.5.3 To consider a reduced period to help expedite regeneration of these problem sites. As we note, the rationale for adopting the original 11-year look back is not clear.

## **5 Acknowledgement of submission**

- 5.1 We would be grateful if you could acknowledge safe receipt of this submission.

The Chartered Institute of Taxation

5 July 2022