

Brownfield Incentives - Budget Update 2008

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With a Budget day remembered more for the cancelled day's racing at Cheltenham than for the budget content itself there was the inevitable air of disappointment in a budget that failed to deliver any real substance beyond what had already been widely consulted on. The only three points of note were:

- The landfill tax exemption for waste from contaminated land will be phased out and withdrawn completely by 1 April 2012;
- Effective of 1 April 2009, Land Remediation Relief will be extended to long-term derelict land;
- Land Remediation Relief will also be extended to specifically include the removal of Japanese knotweed (excluding removal to landfill), also from 1 April 2009.

LANDFILL TAX EXEMPTION

The Treasury's document only refers to a phasing out of the exemption by 1 April 2012, speaking generally of an intention to consult on draft legislation in the summer of 2008. HMRC's Budget Notes, however, give an effective operation date of 1 December 2008, from which applications for landfill tax exemption will not be accepted. Other transitional arrangements may be put in place, but nothing further is known at this time.

With the tax expected to reach £48/t by 2011 there is clearly a need to focus attention on getting applications for exemption in before the deadline in November. Whether amendments to certificates will

be allowed beyond this date to accommodate such things as the discovery of further pollutants or a change in end use requiring further remediation is not known – but for the purposes of planning you would be advised to plan for the worst case!

LONG-TERM DERELICT LAND RELIEF

Other than declaring the intentions to introduce the derelict-land relief in 2009, very little was reported in the budget about the future changes. The only information we therefore have regarding the potential detail of the relief is contained within the Treasury's consultation response which was published just before Christmas.

Current thinking for a suitable definition of "Derelict Land" is leaning heavily towards the Derelict Land Grant Act 1981 wording, "Land or buildings so damaged by previous development that it is incapable of beneficial use without treatment". This is equivalent to category C land in the National Land Use Database (NLUD) and work is being undertaken to see if registration on the NLUD is sufficient, although not necessary, for an entitlement to the new relief.

The most interesting detail is the Government's intention to keep the spirit of the "Polluter Pays Principle" for derelict land. In the same way that polluters cannot benefit from tax relief under the existing land-remediation relief scheme, any land which was not derelict at the time of acquisition will be excluded. The logic is that the owner has 'allowed' the land to become derelict and hence is effectively the 'polluter' in this application.

As regards the potential scope of qualifying expenditure, although still very speculative at this stage, it is expected that a list will be produced to restrict the scope to specific items that are a) directly linked to the derelict site; b) items that are only required on derelict sites; c) items which are of sufficient scale as to present a genuine blockage to development. The following were noted in the Treasury response as possible inclusions:

- Removal of post tensioned concrete heavyweight construction;
- Removal of building foundations and machinery bases;
- Removal of reinforced concrete pilecaps;
- Removal of reinforced concrete basements;
- Below-ground demolition of redundant services;
- Fees directly relating to the above items.

There are of course some flaws with this approach.

Given that the main reason for dereliction is market failure (namely costs exceeding value) it is difficult to say that any one site feature is any more responsible for dereliction than any other. Furthermore, to say that any cost is unique to derelict sites would also be wrong and therefore a prescriptive list of allowable costs for this new relief is going to be very difficult to achieve.

Also, the nature of these target sites is such that in many cases grant support is also likely to be required. Unfortunately though, tax relief and grants find it difficult to co-exist and it will therefore be interesting to see if the government includes EIC recommendations to remove the rules that disallow relief on expenditure paid for by a grant from any new legislation.

WHAT DOES IT MEAN FOR YOU?

In essence, there is very little change for the 2008/09 financial year. The exception to that position is if you are engaged in a development reliant upon attaining an exemption from landfill tax for contaminated land before April 2012. In this eventuality, developers are strongly advised to focus on submitting applications before 1 December 2008 deadline.

Otherwise, until such time as new draft legislation is made available, it is best to focus on the relief that already exists for expenditure incurred on qualifying remediation and the advice would therefore be to:

- Always think proactively about land-remediation relief when dealing with contaminated sites;
- Remember that land-remediation relief can be claimed retrospectively (up to six years in most cases);
- Become familiar with the National Land Use Database, how it operates and the sites which may benefit from the new relief;
- If pursuing grant funding or other public-sector support then consideration should be given to the interaction with tax relief as part of the development agreement negotiations.

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