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capital allowances and tax solutions

The following article, written by Paul Munday has been extracted from Brownfield Land Report Issue IV, March 2009.

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# Land Remediation Tax Relief – value engineering at its simplest

**Paul Munday of Roche Associates** describes new fiscal measures which should provide a valuable financial incentive to investors in brownfield sites.

For several years now ‘us specialist property tax advisers’ have taken every opportunity we’ve had to highlight the plight of this seldom used or little understood tax relief to help those in need of financial assistance on difficult (or near impossible!) brownfield sites.

Well, if you’ve followed any of mine or fellow industry colleagues’ recent commentaries, including last year’s article ‘The Change Ahead’ in the previous issue of *The Developers Guide to Brownfield*, you may say that we hadn’t done a good job of it! Well, who wants to save up to 50% of their remediation costs anyhow?

Obviously the property boom provided too much wealth through the more traditional development profit angles.

Despite our cynicism we do recognise the implicit failings of the original legislation and so has HM Revenue & Customs (HMRC), which has in the last two to three years sought to redress some of the issues to make it both more user friendly and a system in which trust can be placed.

Have they succeeded? Well, in part, yes, if they deliver all that they promise. The changes proposed should engage even the most sceptical of property directors – read on and prepare to be surprised...

## What could it do for you?

Land Remediation Relief (LRR) already provides tax deductible expenditure of 150% of qualifying remediation costs and tax relief really doesn’t get any better than this. For a large property investment company this means savings of 42% of the qualifying remediation cost or 14% savings for a trading developer.

Following the strategic Urban White Paper review of LRR some three years ago and the ensuing lengthy public consultations, we are drawing ever closer to the enactment of

some key changes to the current scheme in this spring’s Budget. Not only have we some valuable specific additions to heads of claim but also procedural and process improvements which should benefit all future claimants.

HMRC has sought to refocus this incentivised tax relief to make it much more valuable, user friendly and to enhance its public profile to increase its take-up. Several key areas have been considered, with draft legislation published in a recent technical note prior to enactment in the coming weeks.

Just before we get too excited and jump into the detail we should of course, say a fond farewell to the Landfill Tax Exemption provisions which ceased to exist for new applications as of 30 November 2008. The demise of this exemption (we are told by HMRC) has paved the way for the additions and changes to LRR scheme.

## So what are the changes?

The obvious big news is the addition of qualifying expenditure on Long-Term Derelict Land sites and the painfully drawn out acceptance that remediating Japanese Knotweed now qualifies for this tax relief. Behind these two, however, in the small print as it were, are a raft of other measures, some extremely positive and to be welcomed. Others, however, are not so positive, like the clauses proposed to deal with one of the biggest complaints about the scheme, the provision of claim certainty, which may actually be quite restricting on

### Example 1

An investor incurring qualifying remediation expenditure of £200,000:

	With LRR (£)	With no LRR (£)
Profits, say	1,000,000	1,000,000
LRR (150%)	(300,000)	
Taxable profit	700,000	
Tax payable (28% large companies rate)	196,000	280,000

42% cash saving = £84,000

some future claimants.

## Long Term Derelict Land

The government, when including LTDL in the legislation, has listened carefully to industry and decided not to restrict qualifying sites to listings on any land use database. It has, however, restricted qualifying sites to those derelict as of 1 April 1998 and continuously derelict thereafter. Relevant sites must have also been derelict when acquired by purchasers.

The definition of ‘derelict’ to be adopted will be akin to that used in the English National Land Use Database and Scottish Vacant & Derelict Land Survey. HMRC will issue guidance on both the use of the Land Use Database and Survey to determine qualifying sites and for those sites not on a database - which is particularly relevant to those in Wales and Northern Ireland.

Qualifying expenditure will be identified by secondary legislation but may include costs to deal with concrete structures, foundation and machinery bases, pile caps, basements, below ground services and associated costs.

## Japanese Knotweed

HMRC has now accepted that Japanese

**Example 2**

An investor incurring costs clearing Japanese Knotweed  
Landfill disposal £200,000; In situ bioremediation £50,000; Total £250,000:

	Pre April 2009		Post April 2009	
	With LRR £	With no LRR £	With LRR £	With no LRR £
Profits, say LRR (150%) Taxable profit	1,000,000 (375,000) 625,000	1,000,000	1,000,000 75,000 925,000	1,000,000
Tax payable (28% large companies rate)	175,000	280,000	259,000	280,000
42% cash saving = £105,000			£21,000	

Knotweed is sufficiently invasive and destructive so as to cause 'harm' or have the potential to cause 'harm' for the purposes of LRR, and relevant qualifying expenditure now qualifies for LRR.

From April 2009 the government intends to legislate to include Japanese Knotweed as a specific contaminant that qualifies for LRR, thereby providing certainty (something not previously available on any contaminant or head of cost!) but excluding costs for removal to a landfill site.

Part of the technical detail also states, however, that the current system of LRR has no restriction on the costs that may qualify for Knotweed remediation and that HMRC will settle all outstanding and future claims for in-date accounting and tax years on that basis. Those claimants who have had past claims in closed periods refused by HMRC will be bitterly disappointed with this decision but it will provide a tonic and a great opportunity for all future claimants to make full successful claims in the window of opportunity that remains.

**Certainty of relief**

One of the greatest barriers to the use of LRR by industry is a mistrust in the availability of tax relief. How can developers and investors rely on the potential savings if HMRC could refuse a claim some two to three years down the line? HMRC has sought to address this position through a series of changes, some positive but some also restricting the tax relief. Both however provide for greater certainty.

HMRC has said it will place greater emphasis on the results produced from Risk Assessments and Site Investigations linking

the development and planning process to the LRR legislation. It has also said that it will accept the stated remediation methodology as at the time of the work carried out, and not any developed thereafter, when considering a claim submitted several months or even years after the work has been carried out. The intention, apparently, is to inform investors and developers at an early stage in the development process as to their ability to make a successful claim. With all the best intentions, however, the risk of claims being successfully challenged by HMRC remains and can never be eliminated. Once again guidance will be issued on this process in due course.

As with Japanese Knotweed, HMRC is also proposing to name arsenic and radon as specifically qualifying contaminants. Additionally, the requirement for a site to be contaminated when acquired will be lifted for the former, i.e. a claim could be made to deal with a Japanese Knotweed infestation occurring at any time as long as it was through no fault of the claimant.

A number of limiting conditions have been proposed, including:

- Higher levels of the definition of 'harm' in order to qualify
- Relief for remediation only resulting from former industrial activity, excluding specified contaminants, i.e. Japanese Knotweed
- Greater levels of land interest required to make successful claims, i.e. Freehold or Leasehold only
- Denial of relief for any works other than removal of the contaminant, i.e. reinstatement
- Removal of qualifying costs incurred on

landfill tax. These limiters could singularly or together severely impair the making or maximising of claims.

**Statutory obligations**

In order to focus the giving of relief even further the government have sought to deny relief for those who are required by law to incur clean-up costs.

Those areas specifically named include work to deal with adverse affects on the amenity of the neighbourhood, defective and dangerous properties, the abatement or prohibition of nuisances and repair notices for listed buildings. Interestingly and surprisingly relief is not denied, as yet, for works carried out under the Control of Asbestos Regulations 2006.

**Good, bad or indifferent?**

The government has listened to industry and professionals throughout the consultation process and has been willing to adopt proposals according to real practical experience – for which we should be grateful. Some very positive step changes have been made, which should all proceed to enactment (he says, remembering last year's 12-month delay!) come this April. The only sting in the tail, in the interests of providing 'claim certainty', is the further tightening of some of the core entitling conditions which although seemingly innocuous could have a significant detrimental impact on the value of allowable claims.

Developers and investors should have more confidence now to factor in this extremely valuable financial incentive into site appraisals, due diligence processes and buying and selling negotiations but we fear a degree of uncertainty will remain. In these difficult times those still active in the market will need to embrace all value engineering techniques, in whatever form they come if they are to succeed and prosper ahead of their competitors. Understanding the risks is key and if tax does not make you comfortable, even with the proposed changes and guidance then ask someone who can provide that comfort; the rewards are certainly worth asking for!

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