

Driving Facts

Tax news

Land Remediation Relief

With the party conference season now in full swing and with all parties offering various weird and wonderful suggestions on how we should start to plug the current £175 Billion budget deficit now would seem quite an opportune time to look at some of the current tax issues doing the rounds.

So, if you are thoroughly fed up with the umpteenth BBC Vox Pop discovering just how few of us actually know who Nick Clegg is, it's time to take a break from the world of the conferences and consider the grass roots tax world, and this time we are going to start by taking a look at the recently updated Land Remediation Relief.

What is Land Remediation Relief?

Land Remediation Relief is a relief from corporation tax that was introduced back in 2001 with the aim of trying to encourage companies to clean up land that was acquired in a contaminated state.

Both capital and revenue expenditure on remediating contaminated land qualify for a trading deduction of 150% i.e. if a company spends an amount of £10,000 clearing up some contaminated land, a tax deduction is available to the company of £15,000. Also, a company that makes a loss can surrender that part of the loss that is attributable to Land Remediation Relief in return for a cash payment (a tax credit) from the Government. The rebate is either 24% of the actual cost or 16% of the increased cost, in this case £2,400.

Qualifying for Land Remediation Relief

The relevant conditions for the relief are that:

- land in the UK is, or was, acquired by the company for the purposes of its trade, and
- at the time the company acquired the land all, or part, of the land was in a contaminated state as a result of industrial activity, and
- the company incurs capital expenditure on qualifying land remediation in respect of the land.

Land or buildings are in a contaminated state if there are substances present that are causing relevant harm or likely to cause relevant harm, or significant pollution of controlled waters.

Qualifying expenditure can include the cost of establishing the level of contamination, materials directly employed in remediating the land, qualifying 'sub-contracted' expenditure on land remediation, and

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expenditure that would not have been incurred if the land had not been contaminated. However, there is no relief if the work is not carried out. A company cannot make an election to treat capital expenditure as qualifying expenditure for Land Remediation Relief if it qualifies for capital allowances, therefore it is important to segregate eligible costs.

Despite the tax benefits that the relief offered to companies, there have been points of disagreement between industry and HMRC, in particular concerning HMRC's view that the term "substance" could not include a life-form and as a general principle, expenditure on removing living organisms and other naturally occurring contaminants did not qualify for relief.

Recent Amendments

In this year's Finance Act, regulations have been introduced which now deal with this issue in respect of certain naturally occurring contaminants and covers the removal of Japanese Knotweed (a "root and branch reform"), Radon and Arsenic.

Land Remediation Relief was also extended to address the issue of long term derelict land. An incentive is now offered to bring derelict land back into productive use and applies to qualifying expenditure incurred after 1 April 2009. For land to qualify, it must be out of productive use since acquisition by the company or, if earlier, 1st April 1998 and be incapable of being used unless buildings or structures on it are removed. Relief is only given for expenditure incurred in establishing what redundant structures are present and removing specific structures from occupying the site. There's also no relief if the work is not carried out.

Exclusions

Land Remediation Relief is not available:

- Where the company, or a party connected to the company, was responsible in any way for causing the contamination or dereliction.
- Where arrangements have been put in place which either create or enhance a claim.
- For cleaning up nuclear sites.

Finally, the relief is not available to individuals or partnerships. However, a company that is a member of a partnership can make an election in respect of its share of the partnership's land remediation cost provided it satisfies the relevant conditions.



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Enterprise Management Incentives (EMI)

Are you looking for a way to reward your hardworking staff but are not really in the best financial position to offer cash pay rises? Then EMI schemes could be the answer. We first discussed the benefits of EMI Schemes back in June 2007, before anybody knew what subprime mortgages were and the term credit crunch was economists' jargon. However, with the unfolding of recent financial events, now would seem an appropriate time to re-introduce the idea of EMI's.

Apart from the flexibility that the scheme offers, the principle advantage of EMI is that the company can pick and choose exactly which employees can benefit from the scheme, without prejudicing the tax beneficial status. However, what principally are those benefits?

Benefits to the Company

The scheme can be offered as a bonus or as part of a salary package without an initial cash layout from the company, apart from the actual costs of setting up the scheme. Giving your employees the opportunity to purchase shares in the company means that they can potentially benefit personally from any capital growth in the company, thus providing a real incentive to grow the business.

However, despite shares being in the hands of your employees, it will still be possible to retain full control. This could be achieved by creating a separate class of share just for the purpose of the EMI scheme, and providing that the shares meet the definition of "ordinary share capital", the voting rights can be restricted. Also, by setting up a separate class of share, dividends can be paid and form part of the remuneration package, without the national insurance cost that a cash bonus would generate.

Benefits For Employees

The main benefit for employees is that they are not liable to pay income tax on the growth in share value between the time they sign up to the scheme. i.e. they are granted options, and the point when they actually purchase the shares, i.e. exercising those options.

Provided that the price at which the share options are offered to the employee is market value, it is only upon the sale of shares that any tax liability arises, and this would be at the Capital Gains Tax rate of 18% rather than the current top rate of income tax of 40%, soon to rise to 50% from April 2011. There is the added advantage of being able to benefit from the CGT annual exemption, currently £10,100.

Also, if no sale of the company is on the horizon, the rules can be drafted so that the company could repurchase the shares, thus allowing the employee to benefit from CGT tax rates, without the need for a sale of the company.

For example, suppose the company granted an employee the option to acquire 100 shares at their then market value of say £1,000 provided certain sales targets are met over the next 3 years. By meeting the targets, the value of 100 shares has risen to say £5,000. If the employee exercises their options at that point, £5,000 of shares can be acquired for £1,000, with no charge to tax or NICs. It is only on the sale of the shares that the employee will be taxed at the CGT rate of 18%.

Health Screening and Medical Check-Ups

It has been HMRC practice for quite some time that where an employer provides their employees with a periodic health-screening or a medical check-up, it should not be considered a taxable benefit. Income tax regulations were introduced in 2007 to formalise the tax exempt status of employee health care, however, this legislation contained a restriction that meant that for the exemption to apply the health care had to be available to all employees on similar terms.

However, HMRC now accept that this could adversely affect the tax-free status of check-ups provided by some employers to only part of the workforce for very good reason. The new regulations now exempt one health screening and one medical check-up in any tax year without requiring these medicals to be offered to all employees. They have also exempted from tax non-cash vouchers and credit tokens provided for qualifying health screenings and medical check-ups.

And finally...

Increases to the National Minimum Wage

With effect from 1 October 2009 the National Minimum Wage increases to the following rates but with 16 and 17 year old apprentices being exempt from the young workers rate:

Age of Worker	Current Rate	New Rate
22+	£5.73	£5.80
18-21	£4.77	£4.83
16-17	£3.53	£3.57

More information is available at www.berr.gov.uk

If you have any queries on any of the subjects covered in this newsletter or on any tax or company secretarial matters please email us at taxteam@trevorjones.uk.com or call our helpline on 0161 493 1930.

These articles are of a general nature and specific advice should be obtained before they are acted upon.



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