In the Autumn Budget 2018, several changes to the capital allowances regime were announced, including the introduction of a new form of tax relief, the Structures and Buildings Allowance (SBA). Relief will be available for new commercial structures and buildings costs, including costs for conversions or renovations, (but excluding residential expenditure, including PRS and student accommodation) entered into on or after 29 October 2018, at an annual rate of two percent on a straight-line basis.

Alongside the Budget announcement, a 13-page HMRC technical note was released detailing the aim of the relief and its key principles. Since the Budget HMRC has been consulting on these proposals and views were requested on four specific aspects of the SBA by 31 January 2019.

Following this initial consultation, HMRC has now published draft SBA legislation alongside the Spring Statement on 13 March 2019. HMRC has asked for views on the draft legislation by 24 April 2019. A Government response to comments on the technical note will be published in May 2019, and the final legislation will be issued in the format of a Statutory Instrument.
Consultation process

We met with HMRC and HM Treasury on several occasions as part of wider consultation meetings on the new relief, and worked with various industry bodies in order to provide a considered response to the consultation. Our response was framed around one of the principles for tax relief for tangible fixed assets set out by the OTS when it provided its recommendations on the capital allowances regime – the principle of “fairness, consistency and certainty for taxpayers”.

We have been pleased with the collaborative process which has been adopted by HMRC and HM Treasury, and note that the draft legislation issued today has sought to address concerns raised during the initial consultation. However, whilst there are several welcome changes to the draft legislation there are also some which taxpayers may not welcome.

Changes to draft legislation from technical note

The main changes to the draft legislation, compared with the provisions set out in the technical note which was released alongside the announcement of the new SBA on 29 October, are as follows:

- The technical note was clearly worded such that the new SBA would only be available for projects where contracts for physical construction works were entered into on or after 29 October. The draft legislation re-affirms this position, stating in the introductory note that the new relief is only available ‘where all the contracts for the physical construction works were entered into on or after 29 October 2018’, with the legislation worded to exclude projects where a construction contract or connected preparatory contract was entered into pre 29 October 2018.

- Potentially complicated provisions around the potential for claiming SBA during periods of disuse (with the period being longer where the structure or building ‘substantially no longer exists following extensive damage’) have been removed. Relief will instead continue to be available, with no prohibition for periods of disuse, which will be far simpler from an administrative perspective.

- For demolished buildings/structures, the technical note stated that a ‘shadow’ SBA would be available. The draft legislation now states that a person ceases to be entitled to an allowance if the building or structure is demolished, with relief instead being obtained via the chargeable gains calculations.

- The draft legislation has introduced a contribution allowance for SBA expenditure, which operates similarly to that for contributions towards expenditure qualifying for plant and machinery allowances.

- It appears that estimates cannot be used to quantify SBA and actual amounts must be shown, and if actual expenditure cannot be shown the SBA expenditure is treated as nil. In numerous situations (e.g. where pricing is a commercially sensitive topic and unavailable), there can often be no practical alternative but to undertake an exercise to re-work construction cost information based on published pricing guides. This provision seems particularly restrictive and has the potential to restrict tax relief for numerous projects.
The draft legislation introduces the concept of an ‘allowance statement’ which will support and verify entitlement to SBAs. This statement must include information regarding dates construction contracts were entered into, details of the SBA qualifying expenditure incurred, the date in which the building/structure is first brought into use and ‘such other supplementary information as may be reasonably required by HMRC’. This last requirement could be open to interpretation but gives the taxpayer scope to push back on what might be seen as overly onerous requests, should they be made.

Other points to note from the draft legislation

The legislation does not specifically define structures and buildings, however it does state that expenditure incurred on the acquisition of land, land reclamation and remediation, landscaping and altering of land (unless altered for preparing land for a building or structure) as well as buildings/structures for residential use will not qualify for the relief.

The draft legislation also states that expenditure on plant or machinery is specifically excluded expenditure for the purpose of the SBA. This means taxpayers will still need to undertake a capital allowances analysis for construction projects to identify the plant and machinery, although this exercise has the advantage of accelerating the timing of tax relief.

Further detail is included in the draft legislation around areas such as acquisitions from developers, highway undertakings, interaction with VAT and co-ownership schemes. These have not been commented on in this note but we recommend the draft legislation is reviewed in more detail if these may be relevant to you.

Practical actions you should consider taking now

**Determine** how you are going to identify key milestones such as which projects will be excluded from SBAs because of timing of contractual commitments, and how you are going to monitor ‘the brought into use condition’.

**Track** each project with a finite 50-year tax life will require multiple detailed schedules and/or a simplified agreement with HMRC.

**Address** the interaction of capital allowances and CGT. This will now need to be considered when there is a gain as well as a loss and detailed tax records will be required.

**Re-model** tax assumptions and impacts for existing and future projects. We are finding that for many clients the benefits of the new SBA are far outweighed by the drop in the special rate pool from 8% to 6%.

**Obtain** the actual amounts of expenditure on buildings and structures, and avoid the use of estimates of costs used which HMRC would not accept. For commercially sensitive information, it may be possible to arrange for this to be provided directly to us under non-disclosure agreements.

Next steps

Following publication of the draft legislation, there will be a 6-week consultation period, during which we will be providing our comments We would like to hear your views on the draft legislation and are happy to discuss the potential impact on your business.

We can help you address the technical and practical implications of the transition and ongoing impact of the changes. Our AI capital allowances tool, CAART, can automatically categorise capital expenditure including assets qualifying for SBAs allowing time to focus on driving value for your business.
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Further information

For further information, please get in touch with your usual contact or one of the following:

Katie Selvey-Clinton  kselvey-clinton@uk.ey.com  020 7951 3723
Stephen Heath  smheath@uk.ey.com  020 7951 0035
Suzanne Alcock  salcock@uk.ey.com  020 7951 0036
Giles Downes  gdownes1@uk.ey.com  020 7197 9078
Brian D’Arcy  bdarcy@uk.ey.com  0141 226 9232
Rich Greatrex-Smith  rgreatrex-smith@uk.ey.com  020 7951 7781
Alex Mackay  amackay1@uk.ey.com  020 7951 0827
Gemma Kellaway  gkellaway@uk.ey.com  020 7951 0218
Adam Clarke  aclarke@uk.ey.com  0121 535 2536
Dan Newton  dnewton@uk.ey.com  0161 333 2950