



PRESS RELEASE

Business Premises Renovation Allowances

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Clarity Needed on Refurbishment Relief

Are Business Premises Renovation Allowances (BPRA's) yet another form of tax relief that's simply too hard to claim? We are now some sixteen months into the five-year life of BPRA's and there is still a lack of clarity as to what actually qualifies for the tax relief.

The concept is well thought out; bring back into use business premises that have been vacant for longer than twelve months, within designated disadvantaged areas. In return, the taxpayer will receive 100% tax relief on the capital expenditure incurred.

Early experience in formulating claims would suggest that, without clarity in some of the definitions applied, the interpretation will largely sit with the Officer of Revenue and Customs and lead to a negotiated settlement in each case.

In this article we will consider some of the principles behind the legislation and highlight some of the issues that are arising.

What is a renovation?

BPRA's are available of the following types of works, where all the other qualifying criteria are met:-

- Converting a qualifying building into qualifying business premises, or;
- renovating a qualifying building that is, or will be, qualifying business premises, or;

- repairs to qualifying business premises.

The range of projects that are covered by these three classifications is quite extensive. There is, however, little clarification within the legislation or HM Revenue & Customs Manuals on whether pure fitting out works qualify. Early feedback from HM Revenue & Customs has shown that they would disallow a BPRA claim on expenditure fitting out empty office space.

This appears to be from the assumption that all fitting out works merely enhance the building as opposed to renovating or converting it.

For a building to be a qualifying business premise, it needs to be used or available to let as a commercial premise. Although who dictates when a premise is available to let? Surely this is decided between the landlord and tenant and could range from when a unit is in a shell specification, right up to a completed building under a turnkey agreement.

Should a line be drawn between works done by a landlord and tenant in bringing a qualifying building back into business use? If you look at the definition of what a renovation is, you could certainly argue that fitting out can be part of the process of 'reviving' and 'restoring' buildings. Although you could also argue that it is an integral part of the renovation qualifying for BPRA's?

A moveable item or a fixture?

As BPRA's are not available on expenditure relating to moveable items, some interpretation will become necessary in claim formulation. Difficulty can arise when:-

- 1) Lump sum contracts are used, and;
- 2) determining how 'fixed' an asset actually is.

Lump sum contracts that include fixed and moveable assets need to be broken down when preparing a BPRA claim. This can be hampered if the supplier, or subcontractor, is either unable or unwilling to provide a split of the costs. If this information is simply not available, an estimate that can withstand HM Revenue & Customs' scrutiny would need to be prepared. If this is not undertaken, a notional split of costs could be challenged.

When looking at how 'fixed' an asset is once installed, the end use of the asset needs to be considered along with Section 173(1) of the Capital Allowances Act 2001 (CAA 2001). This states that a fixture is 'an item of plant and machinery that is fitted in or to a building so that it becomes part of that building.' Tables and chairs are straight forward enough but, for example, specialist installations such as the sound and lighting systems in a nightclub introduce the need for careful consideration of the principles.

A specialist lighting installation can comprise a number of elements, including; lighting rigs and motors, secondary steel, control equipment, wiring and a wide variety of light fittings. An understanding of how the system is used and works is needed so that a split between fixed and moveable assets can be made. In a concert venue, the lighting system is used very differently than that in a night club. There is a requirement for flexibility in a concert venue, driven by the variety of artistes performing on stage and their individual requirements; therefore, more of the lighting system will be moveable in nature.

It must also be acknowledged, however, that such specialist items are only fixed to the building to a certain extent (e.g. wired-in or bolted to the structure) in order that they can function. It is debateable whether such items actually become part of the building just because they are fixed. If a property containing such items was sold and leased back, the right to Capital Allowances on these 'trade fixtures' would not necessarily pass to the new owner of the property, but remain instead with the occupier. For BPRA purposes, therefore, the question is not merely 'how' the items are fixed, but 'why' are they fixed.

Chattels that are not machinery or plant, would likewise fail to qualify for BPRA's because such items, (for example, artwork in an office) would clearly not be part of a building, or structure under CAA 2001, Section 360C.

Interaction with long funding lease legislation

We should also not overlook the implication of whether or not an item is a fixture when deciding whether any form of Capital Allowance is available. Items which fall to be treated as fixtures, under CAA 2001, Section 173(1), will qualify for BPRA's under CAA 2001, Section 360B(3)(b) (if the other qualifying criteria are met), whereas chattels should normally qualify for plant and

machinery allowances. Whether plant and machinery fixtures are leased on a long funding lease (under FA 2006, Schedule 8) is irrelevant if BPRA's are available, because in such circumstances, the lessor will still be entitled to BPRA's on the cost of the fixtures. Chattel plant and machinery leased under a long funding lease, however, would give rise to neither BPRA's nor plant and machinery allowances. The lessor would be denied BPRA's under CAA 2001 Section 360B (3)(d) and also plant and machinery allowances under CAA 2001, Section 34A.

Extensions

Perhaps a more common area of contention will be the changes that take place to the building as part of the renovation project, particularly where this includes an extension to the original structure.

Within the legislation, there are exclusions for claims relating to extensions of the original building. They are only allowed as qualifying for BPRA if they are 'providing a means of getting to or from the qualifying business premises.'

What is perhaps not so clear is how far you can take the provision of access to a building qualifying for BPRA. What about access ramps, canopies, car parks, loading bays or roads? These can all be considered as providing a means of getting to or from the qualifying building.

When there is a true extension that provides additional useable floor space, rather than just ancillary works, clearly this should be excluded.

Developing adjacent land

As with extensions, further development on adjacent land is excluded; however, does this exclusion relate solely to the provision of additional space or also to site works, such as the construction of a car park or loading bay? Arguments may well be

raised in terms of the deliverability of the project without such works.

If the addition of a car park is part of the planning consent for the conversion or renovation works to a BPRA qualifying building, then aren't these works part of the renovation? Under CAA 2001, Section 360B(1), qualifying expenditure is capital expenditure incurred 'on, or in connection with' the conversion or renovation of a qualifying building. It could very readily be argued that the installation of any of the above works constitute expenditure 'in connection with' the conversion or renovation.

Perhaps, if HM Revenue & Customs consider there to be some uncertainty as to what qualifies for BPRAs, then the Treasury should exercise its power under CAA 2001, Section 360B(6) to issue regulations to clarify the extent of what is qualifying expenditure.

In summary, there are a number of questions surrounding what actually qualifies for BPRA's that need to be fully tested. There are other 100% allowances currently available, such as Enhanced Capital Allowances on energy efficient plant and machinery. These do have more claim criteria and are certainly more complex to claim. A happy medium does need to be struck so that investors are encouraged to make full use of these incentives.

In a slowing economy, the marginal nature of many construction opportunities will highlight the need to fully explore and exploit any available relief early and detailed consideration of the Business Premises Renovation Allowance may prove a useful turnkey to viability.

For further information, or to discuss any of the above in more detail please contact us on 0800 526262.