

# Land Remediation Relief

Allows a developer to recover up to 14% of their costs in the year of sale.

Allows an investor to claim up to 42% of their costs in the year the expenditure is incurred.

Complex entitlement and eligibility criteria making planning essential.

**Land Development Team**  
Tel: 0121 710 1300

**David McCreddie**  
Email: [david.mccreadie@davislangdon.com](mailto:david.mccreadie@davislangdon.com)

**Hilary Allen**  
Email: [hilary.allen@davislangdon.com](mailto:hilary.allen@davislangdon.com)

**Robert Jones**  
Email: [robert.jones@davislangdon.com](mailto:robert.jones@davislangdon.com)

[www.dlcrosherjames.com](http://www.dlcrosherjames.com)



## About the relief

In 2001, the Government introduced a new tax relief to incentivise the remediation of contaminated land with the purpose of facilitating the supply of developable land, particularly in relation to meeting affordable housing targets. The Budget 2009 saw the first update of the original legislation, including the extension of the relief to long-term derelict land.

For developers and investors, land remediation tax relief (LRR) can provide major savings on construction expenditure. It should not be confused with the old landfill tax exemption for contaminated land, which was a wholly separate scheme withdrawn by the Government in November 2008.



## Entitlement to the Relief

The legislation sets out entitlement conditions which must be satisfied in order to claim LRR. Whilst seemingly straightforward, they can pose a number of problems and care needs to be taken to ensure that the company does not inadvertently fall foul of the conditions when engaging in the purchase of contaminated sites.

General conditions for all sites:

- Must be a company
- Must be land in the United Kingdom
- Must acquire an interest in the land
- Must not be the polluter or have a relevant connection to the polluter
- Must not be in receipt of a subsidy.
- Must not also qualify for Capital Allowances (particular to capital expenditure only)

Additional conditions introduced since 1 April 2009:

- The interest in land must be major - freehold or leasehold longer than 7 years
- Must not be obligated to carry out remediation under a statutory notice.

Additional condition particular to derelict land:

- Must not be in or have been in productive use at any time since at least 1 April 1998.
- Must not be able to be in productive use without the removal of buildings or other structures

WHO CAN CLAIM?	WHO CAN'T CLAIM?
House builders	Private individuals
Property developers	Non-resident companies
Property investors	Polluters
Owner occupiers	Non-taxpayers

## Eligibility: What constitutes qualifying land remediation?

### For Contaminated Land...

Relevant land remediation is defined as the doing of works, including preparatory activities to the land in question, or any controlled waters affected by the land, or adjoining or adjacent to land, for the purpose of:

- Preventing or minimising, or remedying or mitigating, the effects of any relevant harm, or any pollution of controlled waters, by reason of which the land is in a contaminated state

Land is in a contaminated state if substances on or under it are causing relevant harm, or the significant possibility of relevant harm being caused to:

- The health of living organisms
- Ecological systems
- Quality of controlled waters
- Property

Furthermore, since 1 April 2009,

- The contamination is due to former 'industrial activity'.

This provides a very broad definition against which expenditure can be claimed. "Industrial" is to be interpreted widely, meaning that the presence of the substance must be due to the historical site use as opposed to being naturally occurring. However, there are still a few specifically allowable naturally occurring substances, such as radon and arsenic. Following that, the overriding question that needs to be asked is whether you would have incurred the expenditure had the land not been in a contaminated state? Challenges by HM Revenue & Customs (HMRC) typically focus on this argument, hence it is vital to construct a sound case with supporting evidence when claiming items as qualifying works.

### For Derelict Land...

Unlike the interpretative definition above for contaminated land, qualifying works for derelict land is a highly prescriptive list and does not work by analogy at all. Relevant derelict land remediation is specified as:

- removal of post-tensioned concrete heavyweight construction
- removal of building Foundations and machinery bases
- removal of reinforced pile caps
- removal of reinforced concrete basements
- below ground removal of redundant services

Preparatory activities for the above are also eligible items for relief.

## Timing

The relief came into effect for expenditure incurred after 11 May 2001, and in the case of the extension to derelict land, it applies to expenditure since 1 April 2009.

The timing, however, of the benefit and the ability to make retrospective claims depends on whether the company incurred capital or revenue expenditure. For capital expenditure, the relief is claimed in the year the expenditure is incurred, whereas revenue expenditure is claimed in the year the expenditure becomes a deduction for tax purposes. The ability to make retrospective claims on capital expenditure is restricted by the need to submit an Election to give affect to the relief to HMRC within two years of the year end in which the expenditure is incurred. Once this time limit passes, the relief is potentially lost (unless it is pre-trading expenditure). Claims on revenue expenditure are not so restricted, and go back as far as six years.

## Value of the relief

The headline figure is technically 150% of the qualifying land remediation expenditure, which is realised through a company's corporation tax return. As such, the actual cash value of the relief, as in the case of timing, depends upon the

accounting treatment of the expenditure. For revenue expenditure, recovery is up to 14% of the qualifying costs; for capital expenditure, recovery is up to 42%, depending on when the property is ultimately sold.

## Losses

Where the relief creates a loss then the company may either carry forward the loss or claim a tax credit by surrendering any unrelieved losses for a payment equal to 16% of the loss surrendered. The decision as to whether to take the tax credit, or carry forward the loss to claim in a later period will depend on the need for immediate cash flow and the prospects of moving into a tax paying position in the future. Other options to be considered include disclaiming or group/consortium relief.

*In example 1, the developer may not have proceeded with the site with an anticipated return of 4%, but once the tax relief is factored in the adjusted gross profit rises to 20%.*

	000s	000s	% of cost
Sale price		£12,000	
Site cost	£500		
Qualifying remediation	£9,500		
Other costs	£1,500		
Total cost		£11,500	
Gross profit		£500	4%
Tax (28%)		£140	
Net profit		£360	
Land remediation relief (14%)		£1,330	
Adjusted net profit		£1,690	
Adjusted gross profit		£2,347	20%

*In example 2, the developer's return is increased from 26% to 41%.*

	000s	000s	% of cost
Sale price		£14,750	
Site cost	£650		
Qualifying remediation	£8,650		
Other costs	£2,380		
Total cost		£11,680	
Gross profit		£3,070	26%
Tax (28%)		£859.6	
Net profit		£2,210.4	
Land remediation relief (14%)		£1,211	
Adjusted net profit		£3,421.4	
Adjusted gross profit		£4,752	41%

## Our Services

Strategic advice; Entitlement Reports; Claim Management; Claim Audit for LRR.

The Land Development team specialises in the commercial aspects of previously developed land. We combine fiscal, cost and risk management in to one service to reduce the uncertainties of contaminated and derelict land for our clients.

For further information, please contact the team on 0121 710 1300 or email the team on the details overleaf.