Comments from ICAS

HMRC Draft secondary legislation:
Capital allowances for structures and buildings

24 April 2019
About ICAS

1. The following submission has been prepared by the ICAS Tax Board. The Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland (‘ICAS’) is the world’s oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.

General comments

2. ICAS welcomes the opportunity to comment on the draft secondary legislation implementing the capital allowances for structures and buildings, which was issued by HMRC on 13 March 2019.

3. We welcome the decision to remove the prohibition for periods of disuse – although this only addresses one of the aspects of the regime which will impose onerous record keeping requirements.

Draft legislation

4. Draft s270AB refers to “connected preparatory” contracts. If these are entered into before the commencement date, expenditure under any contract for construction entered into on or after the commencement date will not qualify for SBA.

5. Subsection 4 of draft s270AB defines “connected preparatory contract” as one “for any works carried out in preparation for the construction of that particular building or structure” and “entered into only because there is an expectation that the construction contract will subsequently be entered into”.

6. It seems clear that this would mean that a contract for significant groundworks linked to a specific building would be covered and would therefore preclude SBAs if the contract was entered into before the commencement date – even where the contract for the building was not entered into until several years later.

7. However, it would be useful to have clarification on less clear-cut situations. For example, for sites which require clearance or decontamination, this work would have to be done ahead of any future use of the site. The work could be carried out under a contract entered into before the commencement date – with an expectation that at some point a building or structure might be erected. However, there could be a lengthy gap and possible change of owner/developer/contractors before this happened so it would be unclear whether there could be said to be an expectation that the actual final contract would be entered into.

8. Draft s270BI excludes expenditure qualifying for plant and machinery capital allowances from qualifying for SBA. This will require businesses to undertake a detailed analysis of expenditure incurred on a construction project, to separate out expenditure on integral features and fixtures. Under the previous IBAs regime businesses which did not want to carry out such a detailed analysis could simply claim IBAs on the total expenditure – accepting that this would slow down the rate at which relief was given on any expenditure which could have been allocated to integral features and fixtures.

9. We cannot see why businesses should not be permitted to adopt a similar approach to the SBA – where producing the detailed analysis would be costly and onerous and the business would prefer to claim SBA at 2% on the total expenditure.

10. The requirement to exclude expenditure on integral features and fixtures from SBA claims is likely to cause particular difficulties where the initial construction costs are incurred by the Crown or another person not within the charge to UK tax. They will have little incentive to carry out the analysis – but failure to do so will mean that any subsequent purchaser (or lessee) will be unable to make a claim.

11. Paragraphs 16 to 21 - proposed amendments to TCGA: We note the comments in the introductory note that the intention, on the demolition of a building or structure which had qualified for SBA (within the 50 year SBA period), is to give relief for unrelieved expenditure via the capital gains computation.
12. We do not consider that this will provide relief for the unrelieved expenditure in some cases where assets have a useful life shorter than 50 years. In many of these cases a capital gain may not arise – and there may be little scope for the business to utilise a capital loss. Obtaining a revenue deduction would be preferable.

13. The current proposals around capital gains relief are likely to act as an undesirable disincentive to replacing structures which have been superseded by technological advances after 25 or 30 years (for example, alternative energy structures with a useful economic life of only 25 years) – and may encourage businesses to delay investment in more efficient structures. We suggest that further consideration should be given to the possibility of an accelerated write off of remaining expenditure to address this issue.