



F3B17-19 CL29: CONSTRUCTION EXPENDITURE ON BUILDINGS AND STRUCTURES

Issued 3 January 2019

Text of briefing submitted on 3 January 2019 to MPs by ICAEW Tax Faculty on Clause 29: Construction expenditure on buildings and structures in **Finance (No.3) Bill 2017-19** updated on 11 December 2018.

This briefing submitted on 3 January 2019 in advance of the Finance Bill Report Stage debates was prepared by the ICAEW Tax Faculty. For further details on who we are please see Appendix 1.

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FINANCE (NO.3) BILL 2017-19: CLAUSE 29: CONSTRUCTION EXPENDITURE ON BUILDINGS AND STRUCTURES

Report Stage Briefing for MPs by ICAEW Tax Faculty

WHO WE ARE

1. Please see Appendix 1.

EXECUTIVE SUMMARY

2. The new Structures and Buildings Allowance (SBA) is welcome and addresses a gap in the current capital allowances system where no relief has been available for the cost of most structures and buildings since Industrial Buildings Allowances were withdrawn by Finance Act 2008.
3. The new allowance will give relief at the rate of 2% per annum for eligible construction costs incurred on or after 29 October 2018.

DESCRIPTION OF THE MEASURE

4. We understand why there was no pre consultation before this policy was announced in the Budget, ie, to prevent planned but not contracted expenditure being deferred pending the new relief being introduced, however a consequence of this is that some aspects of the detailed design are unclear, while others seem flawed. Work is ongoing to resolve these matters and consequently, the detail of this legislation will be implemented entirely through delegated powers to be laid in Finance Act 2019.
5. Clause 29 Finance (No.3) Bill 2017-19 comprises 13 paragraphs, which between them will delegate the detail of the SBA to secondary legislation, which will, in turn, insert all the detailed rules into the Capital Allowances Act 2001.
6. While it may be convenient to correct any problems with the drafting through further secondary legislation for a limited period, such power should not be left in Finance Act 2019 in perpetuity. To avoid leaving the SBA exposed to future amendment, or even cancellation, by such further secondary legislation, without adequate consultation, we recommend that the delegated powers of clause 29 should be subject to a sunset clause.
7. Such a sunset clause provision will ensure that powers to make further changes using clause 29 cease to have effect after a certain period of time unless further, pro-active action is taken to extend them.

Suggested new legislation

8. We suggest an additional paragraph 14
"No further amendments shall be made by this section on or after—
 - a) for corporation tax purposes, 1 April 2021, and
 - b) for income tax purposes, 6 April 2021."

FURTHER INFORMATION

9. As part of our Royal Charter, we have a duty to inform policy in the public interest.

APPENDIX 1

ICAEW TAX FACULTY – WHO WE ARE

ICAEW Tax Faculty is internationally recognised as a source of expertise and is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 2.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

APPENDIX 2

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).