EXPLANATORY MEMORANDUM TO

THE CAPITAL ALLOWANCES (STRUCTURES AND BUILDINGS ALLOWANCES) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument introduces a new tax relief in the form of a capital allowance called the structures and buildings allowance. The structures and buildings allowance gives relief to businesses that are liable to income tax or corporation tax. The structures and buildings allowance will be available for qualifying expenditure incurred from 29 October 2018 on non-residential structures and buildings.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The power under which this instrument is made is in section 30(1)(a) Finance Act 2019 and provides for a new relief effective from 29 October 2018, a time before the instrument comes into force. This is to enable businesses to invest in qualifying structures and buildings from 29 October 2018 with greater certainty that they can claim relief and do not need to defer their investment decisions to a time after this instrument comes into force.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 Jesse Norman MP (Financial Secretary to the Treasury) has made the following statement regarding Human Rights:

"In my view the provisions of the Capital Allowances (Structures and Buildings Allowances) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made in order to provide a new relief against corporation tax or income tax, as provided for by a new power in section 30 Finance Act 2019. This is the first use of the power introduced in section 30 Finance Act 2019, which provided that the new structures and buildings allowance will be available from 29 October 2018. The power in the Finance Act 2019 was introduced to give businesses certainty that the new relief will be available once this statutory instrument is made, to encourage businesses to invest in new non-residential structures and buildings. The power enables this statutory instrument to amend primary legislation in the Capital Allowances Act 2001 under section 30(1) Finance Act 2019 as well as to amend other enactments under section 30(8)(h) Finance Act 2019. Section 30 Finance Act 2019 establishes the allowance in principle and the rate of the allowance. This instrument makes detailed provision for the tax relief to come into force.

7. Policy background

What is being done and why?

7.1 Capital allowances provide tax relief, spread over a number of years, for the cost to businesses of investing in capital assets. The allowance is given by deducting from taxable profits a percentage of the qualifying expenditure a business has incurred. The allowance thereby provides an incentive for businesses to invest by giving them a reduction in their tax liability.

7.2 Since April 2011, capital allowances were not available for the cost of any type of building or structure. This statutory instrument provides for a new tax relief for businesses who invest in newly built, converted or renovated, non-residential structures and buildings from 29 October 2018. The relief is a long-standing ask from businesses and is designed to incentivise business investment to help support growth and productivity. It also fills a gap in the UK capital allowance regime compared to other jurisdictions, which provide reliefs for structures and buildings, thereby this instrument aims to increase the UK's competitiveness as a place to do business.

7.3 The structures and buildings allowance gives a deduction of 2% per annum of the cost of construction or acquisition incurred from when a qualifying structure or building is first brought into use. All the qualifying cost may be relieved over the following 50 years. In order to qualify, the structure or building must be used for a qualifying activity such as a trade or property business and must not be used as a residence.

7.4 As this is a new relief for businesses who invest in newly built, converted or renovated structures or buildings, it is not possible to provide details of the number of businesses that will be entitled to claim this relief. However, all businesses are potentially able to claim the relief if they invest in qualifying structures or buildings.

7.5 Articles in tax related professional publications show that there is a considerable level of interest in claiming the new relief by the business community and their tax advisers.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument does not amend any other instrument.

10. Consultation outcome

10.1 At Budget 2018, on 29 October 2018, the government published a technical note[1] inviting feedback and views from businesses, advisers and members of the public with an interest in tax relief for capital investments in structures and buildings. This open consultation ended on 31 January 2019. We received 49 written responses and about 100 stakeholders attended six consultation meetings held with the Confederation of British Industry, professional tax and accountancy bodies and bodies who advise on infrastructure development. There have been several articles in the tax professional press both welcoming the new relief and providing feedback on its scope and method of giving relief.

10.2 The government set up a consultative committee to test draft legislation before publishing on 13 March 2019 and invited comments from stakeholders by 24 April 2019.

10.3 The government published a response[2] which sets out a full summary of responses to the consultation and the changes made as a result of the consultation process.

10.4 Overall the new relief is welcomed by stakeholders though some wanted the scope to be extended to other types of buildings such as those providing various types of residential accommodation. The government aims to support businesses who are investing in structures and buildings used for commercial and not residential purposes and therefore has not expanded the scope of the relief. The government has listened to representations and removed a provision that would deny relief where a structure or building stops being used, and have expanded the scope to include a proportion of relief for shared areas as well as allowing relief for qualifying expenditure incurred before business commences.

10.5 Other areas have not changed in response to stakeholder representations such as retaining a requirement that businesses maintain a statement of evidence of the qualifying expenditure incurred.

10.6 Following publication of draft legislation on 13 March 2019, some changes were made in response to stakeholder views. These changes include:

- More flexible rules to reduce administrative burden in calculating allowances on expenditure incurred after a building or structure has come into use.
- Giving allowances where a structure or building is purchased from the Crown or other person not within the charge to tax
- Modifying rules for claiming allowances when a person makes a contribution to another person.
- Allowing evidence of expenditure incurred to be obtained from any previous owner of the structure or building.

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[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752092/Capital_allowances_for_structures_and_buildings_technical_note.pdf

[2] https://www.gov.uk/government/consultations/draft-legislation-detailing-a-new-capital-allowance-for-new-non-residential-structures-and-buildings

- Clarifying that assets used for purposes ancillary to residential use include those assets situated on land within the curtilage of a residential structure or building.
- Modifying some of the amendments to the Taxation of Chargeable Gains Act 1992. This includes preventing double taxation and double deductions and clarifying the rules on demolition. In addition new rules have been introduced for capital contributions.
- Clarifying the commencement provisions.
- Clarifying the rules to allow relief for costs of renovation or conversion of a building where a developer is involved.

11. Guidance

11.1 Guidance will be published on Gov.uk in July 2019.

12. Impact

12.1 The impact on businesses, charities or voluntary bodies is that it will help to stimulate business investment in the UK economy by providing an incentive for businesses to invest in non-residential structures and buildings. Businesses will need to assess their capital allowance entitlement for non-residential structures and buildings, and to claim it as a deduction in computing their taxable profits. Where charities or voluntary bodies incur relevant expenditure they will need to provide evidence of the expenditure incurred to enable any subsequent purchaser of the structure or building to claim the structures and buildings allowance.

12.2 There is no significant impact on the public sector, however they too will need to provide evidence of the expenditure incurred on qualifying structures or buildings to enable any subsequent purchaser to claim the structures and buildings allowance.

12.3 A Tax Information and Impact Note covering this instrument will be published on the gov.uk website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses because the instrument is a wholly relieving provision and take up of the relief is not obligatory.

13.3 The basis for the final decision on what action to take to assist small businesses (employing up to 50 people) is that the open consultation did not bring to light any disproportionate burden for small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Her Majesty's Revenue and Customs will monitor the numbers of businesses that claim structures and buildings allowance and the amounts of such claims in their tax returns as part of the department's normal review of the effectiveness of tax reliefs.

14.2 The regulation does not include a statutory review clause and no ministerial statement is required because of the exception for matters that are in connection with tax under section 28(3)(a)(ii) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Behroz Rustumji at HMRC Telephone: 03000585921 or email: contact.capitalallowances@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mike Crabtree, Deputy Director for Innovation and Growth, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman MP (Financial Secretary to the Treasury) can confirm that this Explanatory Memorandum meets the required standard.