



Capital allowances – safety at sports grounds

The Office of Tax Simplification (OTS) recommended in its final report on the review of tax reliefs that the specific provisions in the capital allowances legislation providing for plant and machinery allowances to be claimed on capital expenditure incurred in respect of required safety precautions be abolished. This measure would have a significant impact throughout sport and this paper considers the issue in more detail and looks at what can be done if the abolition of the relief is to be opposed.

Background

The safety of sports grounds is covered by specific legislation, which is administered either by the local authority or the Football Licensing Authority (FLA) in respect of league and international football grounds in England and Wales. In order for venue owners to be able to operate their venues, they have to be in possession of a safety certificate which specifies the maximum number of spectators that the venue can hold, the number, size and situation of entrances and exits to the venue and the number, strength and situation of any crush barriers. The legislation and documentation concerned with this is:

- The Safety of Sports Ground Act 1975;
- Fire Safety and Places of Sport Act 1987;
- Football Spectators Act 1989; and
- Guide to Safety at Sports Grounds ("Green Guide")

The Safety of Sports Ground Act 1975 (1975 Act) was a result of the Wheatley Report of 1972, commissioned following the Ibrox Stadium disaster where 66 people died at a Rangers v Celtic game in 1971.

© 2011 Dunham Consulting. All rights reserved.

This note is a general guide only and is not intended to be a comprehensive statement of the law. Application of the principles set out will depend upon the particular circumstances involved and we recommend that you obtain professional advice before acting or refraining from action on any of the contents of this note. Dunham Consulting would be pleased to advise readers on how to apply the principles set out in this note to their specific circumstances. Dunham Consulting accepts no liability for the opinions it contains, or any omissions or errors, or any loss occasioned to any person acting or refraining from action as a result of any material in this note



The Fire Safety and Safety of Places of Sport Act 1987 (1987 Act) was enacted to build upon the provisions of the 1975 Act and the Fire Precautions Act 1971, following the recommendations of the Popplewell Report of 1986 commissioned after the fire at Bradford City's Valley Parade ground.

The Green Guide was first published in 1973, in response to Wheatley, with a second edition published in 1976 to take account of the recommendations of the Working Party on Crowd Behaviour that the Wheatley Report instigated. Following the Popplewell Report of 1986, an expanded second edition was published in 1986. The third edition was published in 1990 to incorporate the recommendations of the Taylor Report following the Hillsborough disaster of 1989 where 95 people died at the Liverpool v Nottingham Forest FA Cup semi-final. The fourth edition was published in 1997 to reflect the vast change in the development of sports grounds in the wake of the Taylor Report. The fifth and current edition was published in 2008 and reflected the growing emphasis on the use of risk assessments by venue operators to identify and implement safety measures.

The Football Spectators Act 1989 (1989 Act) established the creation of the FLA, originally to implement the Football Membership Scheme proposed in response to the Heysel disaster of 1985. However, the Taylor Report recommended that this scheme be abandoned, and the FLA was then tasked with implementing the key recommendations of Taylor, particularly:

- Operating a licensing scheme for grounds at which designated matches are played;
- Advising the Government on the introduction of all-seater stadia;
- An on-going review of local authorities' responsibilities under the 1975 Act; and
- Ensuring any standing areas which are retained by League 1 and 2 clubs of the Football League meet the necessary safety standards.

Presently, there is a private members bill going through Parliament which, if enacted, would expand the role of the FLA by renaming it the Sports Grounds Safety Authority, but would not extend its licensing functions or its local authority oversight duties under the 1989 Act to sports grounds other than football grounds.



Expenditure on Safety at Sports Grounds

The Capital Allowances Act 2001 (CAA2001) contains specific provisions regarding the treatment of expenditure incurred on safety at sports grounds which are contained in s30, 31 and 32 of CAA 2001.

S30 CAA 2001 covers the expenditure incurred on stadia designated by s1 of the 1975 Act and which have a capacity of more than 10,000 (all sports) or, 5,000 for Premier League and Football League grounds in England and Wales.

S31 CAA 2001 covers expenditure incurred on stands with an accommodation for 500 or more at sports grounds which are not designated by s1 of the 1975 Act, but which are covered by the requirements of Part III of the 1987 Act.

S32 CAA 2001 covers expenditure at sports grounds which, although fall in the definition of s1 of the 1975 Act, have no designation order in place at the time the expenditure is incurred and the local authority certifies that the safety precautions would have been required of the ground had it been designated.

The aim of this specific legislation is to offer tax relief for expenditure on assets which, using the normal rules for what is plant and machinery, would not be expected to qualify. The types of assets that could be included under the heading of safety which would not fall to be treated as plant and machinery under the normal rules are:

- Fire engineering facilities;
- Escape routes;
- Barriers, rails, walls and emergency doors;
- Fire resistant substances; and
- Steps, aisles and gangways.

As a guide, expenditure incurred under the safety at sports grounds provisions could constitute around 15% of the total construction expenditure for a stadium.



HM Revenue & Customs (HMRC) position

HMRC have, until the last few years, dealt with these reliefs in a very inconsistent manner with individual Inspectors of Taxes applying a differing number of approaches. These included:

- denying the relief completely on the basis that in certain circumstances they believed it didn't apply;
- insisting the relief only be allowed if the necessary documentation was in place prior to the expenditure being incurred;
- deciding that the claim should be allowed without reference to supporting documentation, but questioning the valuation process used to establish the qualifying expenditure; and
- accepting the claim as submitted either with or without supporting documentation.

However, in the last five or so years following the construction of some major venues in England and Wales, HMRC has developed a more consistent approach under the guidance of the Capital Allowances Policy unit within HMRC. This has seen the rejection of claims made in respect of either completely new stands at existing grounds, or a completely new stadium on the site of the former stadium or elsewhere. This is because HMRC do not feel that the legislation applies in these cases. However, HMRC has not, in the main, put forward a fully reasoned argument to support this view, instead it would appear to be based on the premise that a local authority cannot require venue operators to do anything apart from putting an existing stand into a safe condition, and the local authority would be acting ultra vires if they were to require a wholly new stand to be constructed as something they consider to be necessary or expedient to secure reasonable safety. In addition, they also consider that the whole construction of a stand is not something that needs to be taken into account because many aspects of the construction are already covered by building regulations.



OTS position

The OTS has recommended that the current reliefs under s30, 31 and 32 CAA 2001 be abolished.

The criteria used by the OTS to arrive at this decision are:

- Is the policy rationale still valid, does the relief achieve it and what might be the impact of the repeal?
- Taxpayer take-up and awareness; and
- Complexity, compliance costs and administrative burden.

The OTS believes the policy objective to have been a success but, as advised by HMRC, they believe it can be argued that it is now redundant. This is on the basis that new stadia and, presumably new stands at existing stadia, to which they consider the relief does not apply, are built to the correct safety standards to meet planning and building control requirements and that grant money is available from the Football Foundation in respect of stadia improvements. In fact, the Football Foundation does not provide grant money for this work, grants, if available, would come from the Football Stadia Improvement Fund.

The OTS considers usage of the relief to be low as they state that most grounds now meet the required standards. Whilst they consider that the current system is relatively simple to administer and straightforward to identify the relief, they believe that the proposed changes to the FLA could add complexity for both the taxpayer and HMRC if a move to a self assessment system is put into place.

Conclusions and next steps

Since it was introduced in 1975, the use of the relief has been widespread across all sports contrary to the position stated by the OTS who seem to focus solely on football in their assessment of the relief. Whilst HMRC's current position has been established for a number of years now, their reluctance to offer a reasoned argument as to why their belief that the relief does not apply to new stadia and new stands at existing stadia, always appeared to demonstrate a weakness in their position. That apparent weakness has been backed up by a fairly robust opinion from Tax Counsel



which concurs with that widely held by professionals and taxpayers alike that the relief applies equally to new and existing stadia.

In addition, by stating that they believe the relief to be redundant, the OTS has not fully understood the position with regard to existing stadia. For an existing stadium, its safety certificate, issued either by the local authority or the FLA, can be withdrawn or modified to restrict capacity unless certain additional work is carried out through the on-going review process of the safety legislation, which requires the certificate to be reviewed on an annual basis. Any work required to be undertaken as a result of the review would be eligible for the relief under the provisions in s30-32 CAA 2001.

Therefore, it was not a surprise, especially given HMRC's view, that the relief was one of those the OTS recommended to be abolished as it could enable HMRC to reach an agreement on those outstanding cases knowing that there would be no precedent set going forward.

It is clear however, that the OTS appears not to have fully understood how both the safety provision system works and the application of the tax relief in coming to their decision to recommend abolition of the relief. Their position is detailed in points L.1 to L.12 of Appendix L of their Final Report. Not only do their comments seem to focus exclusively on football grounds, but their comments regarding how the system actually works do not appear to be well informed and no doubt make a significant contribution to their findings. Also, and just as importantly, is their statement that the relief cannot be applied to new stadia and new stands at existing stadia which would suggest, in the absence of anything to contrary, they have followed HMRC's position on this point.

The process that is now to be followed, if the recommendation to abolish the relief is accepted by the Government, is that the Chancellor of the Exchequer will make a formal response as part of Budget 2011, with consultation following on from draft legislation in accordance with the new policy making approach, with a view to amendments being made to the legislation in Finance Bill 2012.



It will therefore be vital that a co-ordinated response by all those stakeholders in sports that will be affected by the abolition is presented to ensure that the Government is made aware of the value that the relief has for taxpayers in the sports sector in the development of new facilities across all sports and at all levels.

Already, the Sport & Recreation Alliance have written to the Chancellor opposing the abolition of relief, pointing out the factual and technical inaccuracies of the OTS's work in this area and they will be responsible for co-ordinating Sport's overall response to the consultation process.

For further advice on how your business could be affected please contact:

Stephen Dunham

Tel: +44(0)118 933 2588

Email: steve@dunhamsconsulting.co.uk

Website: www.dunhamsconsulting.co.uk