



August 2011

Consultation response on the proposed abolition of tax relief for capital allowances – safety at sports grounds, sections 30-32 Capital Allowances Act 2001

Introduction

The tax relief for capital allowances for safety at sports grounds contained in sections 30-32 Capital Allowances Act 2001 (CAA2001), is one of the thirty six reliefs that the Government, HM Treasury, HM Revenue & Customs (HMRC) and the Office of Tax Simplification (OTS) considered could be abolished after a period of transition, following the publication of OTS report in March 2011.

In seeking to consult on the proposed abolition, views on the following impact indicators are sought:

- Is the rationale for abolishing the relief sound?
- How many claimants of the relief are there?
- What sector/demographic benefits?
- What is the value of the relief to the claimants?
- If the relief were retained, will the value of the relief change over time?
- Are the proposed transitional arrangements fair and proportionate?

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

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

Specific relief through capital allowances for expenditure incurred in respect of sports grounds safety works was first introduced in Finance (No. 2) Act 1975.

The legislation is now contained in sections 30-32 CAA2001 and deals with stadia designated by s1 of the 1975 Act which have capacity of more than 10,000 (all sports) or 5,000 for Premier League and Football League grounds in England and Wales, or stands with accommodation of 500 or more at sports grounds which are not designated by s1 of the 1975 Act, but which are covered by Part III of the 1987 Act.

The aim of the specific legislation is to offer tax relief for expenditure on assets which, using the normal rules for determining what is plant and machinery, would not be expected to qualify for relief through capital allowances.

The proposal

The OTS and HMRC consider that the original purpose of the relief has now been met as existing stadia should have been brought up to the necessary standards and the relief is not relevant to new stadia by reason of the assumption that new stadia are designed from the outset to comply with all relevant safety standards.

They do not anticipate any significant impacts from the abolition, though they now accept an impact could arise if sports grounds are subject to additional safety measures. However, they feel that in these cases grant funding is often available to assist with meeting such expenditure.



Other impacts stated are the shift away from local authority approval to self assessment for which the abolition of the relief is seen as facilitating and that it will reduce HMRC compliance costs as HMRC consider erroneous claims have been made in the past. HMRC accept that the abolition will have a negligible effect on Exchequer receipts, though this has not yet been quantified.

It is proposed that the abolition would take effect for expenditure incurred on or after 1 April 2013 for companies and on or after 6 April 2013 for any unincorporated businesses and will be included in Finance Bill 2012.

The response

Is the rationale for abolishing the relief sound?

In simple terms the answer to this question is no, and there are a number of reasons for taking this point of view.

Firstly, the assumption that the relief does not apply to the construction of new stadia, and presumably new stands at existing stadia is incorrect, as we believe that it is not what the legislation states. This view of the legislation is supported by a fairly robust opinion from Tax Counsel which concurs with that widely held by professionals and taxpayers alike that it applies equally to new and existing stadia. In addition, HMRC have never been able to put up a reasoned argument beyond stating that the relief does not apply to back up their position.

Secondly, the contention that the relief has now met its purpose and is therefore redundant shows a lack of understanding of the position in respect of existing stadia, though an attempt to recognise it has now been made in the consultation document. For existing stadia, the 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.

Thirdly, while the Exchequer impact has not been specifically determined, the consultation document does state that the abolition is expected to have a negligible



impact on receipts. Therefore, to abolish a relief that is still properly utilised by taxpayers and which does not put any strain on Exchequer receipts would seem illogical.

Fourthly, HMRC state that their compliance costs will be reduced as a result of the abolition. Again, the impact of the cost to HMRC in fulfilling their statutory role should not be a reason for making tax law, especially given that the OTS consider the legislation to be relatively simple. The contention that the proposed move towards a self-assessment system will be aided by the abolition of the relief is again misleading. This proposal relates to the FLA only and as such, only relates to football grounds. Grounds for sports other than football would continue to be dealt with by the local authority. Also, the contention that self assessment would add to the complexity for the taxpayer is again unfounded, as the safety officers of clubs together with their external advisors are well versed in interpreting the relevant guidelines, regulations and statutory provisions (if they were not it would rather defeat the object of self assessment for such a crucial area) for this not to be an issue.

How many claimants of the relief are there?

The OTS in its final report of March 2011 considered usage of the relief to be low and seemed only to focus on football grounds. While football does have the majority of stadia to which the legislation applies, there are a number of other sports which do utilise the relief which include:

- Athletics;
- Cricket;
- Horse racing;
- Motor sport;
- Rugby League;
- Rugby Union; and
- Tennis.

While utilisation of the relief may well be more prevalent within the larger stadia, for smaller stadia it has been more of a lack of awareness of the relief available rather than it not being applicable.

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What sector/demographic benefits?

By definition, the relief is only applicable to the sports sector, though the impact of the relief stretches much more widely.

At the governing body level, the relief enables these not-for-profit organisations to retain more of their revenues which are then available for distribution throughout their sport, especially at the grassroots level. This assists in maintaining and increasing participation levels and is consistent with the Department for Culture, Media & Sport strategy of providing a real legacy for sport post the London 2012 Olympic Games.

For individual clubs and organisations, the benefit is much the same and is able to support the wider community programmes that they are able to offer. For community clubs looking to provide the new generation of multi-sport complexes, which in many cases can rely on this tax relief in their cash flows, it is a vital tool in helping with the delivery of such assets at a time when budgets are already being stretched or reduced.

What is the value of the relief to the claimants?

While we have not been able to provide exact figures of the level of tax relief that has been claimed, it has been estimated that it is well in excess of £100million, which taking the current main rate of corporation tax of 26%, would mean the value to sport is in excess of £26million at current rates. This represents a very negligible figure in the context of the overall tax revenues for the Exchequer, but represents a very significant sum for the sports sector.

If the relief were retained, will the value of the relief change over time?

It has already been stated that the overall value in Exchequer terms is negligible, and with the continued reductions in the rates for corporation tax to which the current Government is committed, together with the reductions to the level of the Annual

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Investment Allowance and rates of writing down allowances for capital allowances coming into effect in April 2012, the impact will actually decrease over time, though still providing sport an extremely valuable benefit. This again is a significant argument in favour of retaining the relief.

Are the proposed transitional arrangements fair and proportionate?

This question is not relevant in this case as the proposal relates to a complete abolition of the relief after a set date.

Summary

It is clear that this relief still plays an important role for sports businesses and its impact is much wider than the organisations themselves, many of which operate on a not-for-profit basis, as it indirectly provides a benefit to all levels of the community and is part of the process of delivering of a sporting legacy post the London 2012 Olympic Games.

Also, the interpretation of the application of the legislation is considered to be flawed and HMRC have failed to provide any real basis for the position they have taken.

Finally, the impact on the public purse is accepted as being extremely negligible, while its value to the sector is extremely high.

Therefore, we contend that the abolition of the relief should not be pursued.

This paper represents the views of Stephen Dunham of Dunham Consulting and has been prepared in association with Richard Baldwin, an independent tax advisor. Between them Stephen and Richard have over 50 years of providing tax advice to the sports sector, particularly on the subject of capital allowances.

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