

CIRD60000 Land Remediation Relief

FA01/Sch22
CTA09/Part14

The broad aim of the legislation

Land Remediation Relief was introduced in 2001 to address issues of market failure relating to the bringing back into use of land that had been blighted by previous use for industrial purposes. The relief extends to both Capital and Revenue expenditure.

In 2009, land remediation relief was extended to address issues of market failure relating to long term derelict land. Again an incentive is offered to bring back into productive use land whose development is blighted by various kinds of dereliction.

Individuals and partnerships

The relief is not available to individuals or partnerships. However, a company that is a member of a partnership can make an election in respect of its share of the partnership's land remediation expenditure, provided it satisfies the relevant conditions.

Life Assurance Companies:

There are special provisions that apply to insurance companies carrying on life assurance business. These can be found in the Life Assurance Manual at LAM 4A.123, 6.111 and 12.24A.

How the guidance is arranged:

The manual contains the following Sections

CIRD60005	Outline of Land Remediation Relief
CIRD60050	Land Remediation Relief –detailed guidance

CIRD60005 Outline of Land Remediation Relief:

This section of the guidance gives an overview of how the scheme works.

More detailed guidance is at CIRD60050 onwards.

The following matters are covered:

CIRD60010	Land Remediation Relief – Periods to 31 March 2009
CIRD60015	Land Remediation Relief from 1 April 2009 – Land in a Contaminated state
CIRD60020	Land Remediation Relief from 1 April 2009 – Derelict Land

CIRD60010 Land Remediation Relief – Periods to 31 March 2009

This is an outline of the scheme as it applied for expenditure incurred on or before 31 March 2009.

Land Remediation Relief is a relief from corporation tax. It provides a deduction of 100%, plus an additional deduction of 50%, for **qualifying expenditure** incurred by companies in cleaning up land in a **contaminated state**.

Land or buildings are “in a contaminated state” where a substance is present that:

- is causing **harm** or could possibly cause harm, or
- is causing, or is likely to cause, pollution in the groundwater, streams, rivers or coastal waters

“Harm” includes adverse impact on the health of humans or animals or damage to buildings.

Qualifying expenditure includes the cost of establishing the level of contamination, removing the contamination or containing it so that the possibility of harm is removed. There is, however no relief if the work is not carried out.

Land Remediation Relief is available for both capital and revenue expenditure. However, the company **must** elect, within two years of the end of the accounting period in which the expenditure is incurred, to treat qualifying capital expenditure as a deduction in computing their taxable profits

In addition to the deduction for the cost of the land remediation, the company can claim an additional deduction in computing its taxable profits. This additional deduction is 50% of their qualifying expenditure.

A company that makes a loss can surrender that part of the loss that is attributable to Land Remediation Relief in return for a cash payment (a tax credit) from the Government. A claim for a Land Remediation Tax Credit must be made in a CT self-assessment or amended self-assessment.

A company can claim the additional deduction at any time within 6 years of the end of the accounting period in which the qualifying expenditure is incurred.

This is only an outline of the scheme. More detailed guidance on Land Remediation Relief can be found at CIRD60050 onwards.

CIRD60015: Land Remediation Relief from 1 April 2009 – Land in a contaminated state

This is an outline of the scheme as it applies for expenditure incurred on or after 1 April 2009 on cleaning up land in a contaminated state.

Land Remediation Relief is a relief from corporation tax. It provides a deduction of 100%, plus an additional deduction of 50%, for **qualifying expenditure** incurred by companies in cleaning up land in a **contaminated state**.

Land or buildings are in a contaminated state if there is contamination present as a result of industrial activity such that:

- it is causing **relevant harm**; or
- there is a **serious possibility** that it could cause **relevant harm**, or
- it is causing, or there is a serious possibility that it could cause, significant pollution in the groundwater, streams, rivers or coastal waters

“Relevant harm” includes significant adverse impact on the health of humans or animals or damage to buildings that has a real impact on the way the building is used.

Qualifying expenditure includes the cost of establishing the level of contamination, removing the contamination or containing it so that the possibility of relevant harm is removed. There is, however no relief if the work is not carried out.

Land Remediation Relief is available for both capital and revenue expenditure. However, the company **must** elect, within two years of the end of the accounting period in which the expenditure is incurred, to treat qualifying capital expenditure as a deduction in computing taxable profits.

In addition to the deduction for the cost of the land remediation, the company can claim an additional deduction in computing its taxable profits. This additional deduction is 50% of the qualifying expenditure. A company can claim this additional deduction at any time within the general time limit for claims under Corporation Tax Self-Assessment. HMRC does not specify any particular form for the claim. A computation reflecting the claim and submitted in time is sufficient.

A company that makes a loss can surrender that part of the loss that is attributable to Land Remediation Relief in return for a cash payment (a tax credit) from the Government. A claim for a Land Remediation Tax Credit must be made in a CT self-assessment or amended self-assessment.

This is only an outline of the scheme. More detailed guidance on Land Remediation Relief can be found at CIRD60050 onwards.

CIRD60020 Land Remediation Relief from 1 April 2009 – Derelict Land

This is a summary of the rules for Land Remediation Relief dealing with bringing derelict land back into productive use. It applies for qualifying expenditure incurred on or after 1 April 2009.

Land Remediation Relief is a relief from corporation tax. It provides a deduction of 100%, plus an additional deduction of 50%, for **qualifying expenditure** incurred by companies in bringing **long term derelict land** back into use.

To be derelict, the land must be out of productive use and incapable of being brought back into productive use unless buildings or structures on it are removed.

To count as long term derelict land, the land must have been derelict since the earlier of:

- When the site was acquired by the claimant company, or a connected party; or
- 1 April 1998.

Relief is given for expenditure incurred in removing the following structures left from previous occupation of the site:

- post tensioned concrete heavyweight construction
- building foundations and machinery bases;
- reinforced concrete pilecaps
- reinforced concrete basements
- below ground redundant services (gas, water electricity and telecommunications)

There are no restrictions on what the site was previously used for. This list is specific and does not work by analogy.

Qualifying expenditure includes the cost of establishing what redundant structures are present and the cost of removing the structures listed above. There is, however, no relief unless the work is carried out.

Land Remediation Relief is available on both capital and revenue expenditure. However, the company **must** elect, within two years of the end of the accounting period in which the expenditure is incurred, to treat qualifying capital expenditure as a deduction in computing their taxable profits.

In addition to the deduction for removing the specified structures, the company can claim an additional deduction in computing its taxable profits. This additional deduction is 50% of its qualifying expenditure. A company can claim this additional deduction at any time within 6 years of the end of the accounting period in which the qualifying expenditure is incurred.

A company that makes a loss can surrender that part of the loss that is attributable to Land Remediation Relief in return for a cash payment (a tax credit) from the Government. A claim for a Land Remediation Tax Credit must be made in a CT self-assessment or amended self-assessment.

This is only an outline of the scheme. More detailed guidance on Land Remediation Relief can be found at CIRD60050 onwards.

CIRD60050: Land Remediation Relief

This section contains more detailed guidance on Land Remediation Relief.

CIRD60005	Land Remediation Relief: Real Estate Investments Trusts
CIRD60051	Capital Expenditure
CIRD60100	Excluded from the relief
CIRD61000	What is Land in a contaminated state?
CIRD62000	What is Derelict Land?
CIRD63000	Qualifying Land Remediation Expenditure
CIRD68000	Tax Credit
CIRD69000	Definitions

CIRD60005 Land Remediation Relief: Real Estate Investment Trusts:

A Real Estate Investment Trust (REIT) is a vehicle that allows an investor to obtain broadly similar returns from their investment, as they would have, had they invested directly in property. The vehicle is a limited company (or a group of such companies), required to invest mainly in property and to pay out 90% of the profits from its property rental business as dividends to shareholders.

Further information on REITs can be found in the “Guidance on Real Estate Investment Trusts”.

Land Remediation Relief and a REIT

A REIT can claim Land Remediation relief on qualifying land remediation expenditure (See CIRD 63000)

Land Remediation Tax Credit and a REIT:

A REIT that makes a qualifying land remediation loss (see CIRD68005) for an accounting period can make a claim to surrender that loss, or a part of that loss, in return for a payment of land remediation tax credit (see CIRD68000).

CIRD60051 Land Remediation Relief – Capital expenditure

FA01/SCH22/PARA1 (1)
CTA09/S1147

Who can have the relief?

A company, carrying on a trade or property business, can elect that capital expenditure on qualifying land remediation is allowed as a deduction in computing their taxable profits.

The deduction is allowed in the tax computation for the accounting period in which the capital expenditure is incurred.

The relevant conditions for relief are that:

- land in the UK is, or was, acquired by the company for the purposes of its trade or property business, and
- at the time the company acquired the land all, or part, of the land was in a contaminated state, and
- the company incurs capital expenditure on qualifying land remediation in respect of the land.

This section contains the following further guidance:

CIRD60055	Capital Expenditure – The election
CIRD60060	Capital Expenditure – Pre commencement expenditure
CIRD60065	Capital Expenditure – Capital Allowances
CIRD60070	Capital Expenditure – Capital Gains Tax

CIRD60055 Capital Expenditure – the election:

FA01/SCH22/PARA1 (6), (7) and (8)
CTA09/S1148

An **election** to treat capital expenditure as a deduction must:

- Specify the accounting period for which it is made
- Be made **in writing** to an officer of Revenue & Customs
- Be made within two years of the end of the accounting period to which it relates

Example:

Company A operates a chain of supermarkets in the UK. It acquires land in a contaminated state on which to build a new store and incurs £50,000 capital expenditure on qualifying land remediation in its accounting period ended 31 December 2010.

Company A must make its election by 31 December 2012 if it wishes to treat the capital expenditure of £50,000 as a deduction in computing its trading profit (or loss) for corporation tax purposes.

We do not specify any particular form for the election. A computation reflecting the claim for the capital expenditure to be treated as a revenue deduction submitted in time is sufficient.

CIRD60060 Capital Expenditure - Pre commencement expenditure

FA01/SCH22/PARA1 (3)

CTA09/S1147 (7)

Where a company incurs capital expenditure on qualifying land remediation before it commences its trade or property business, for the purposes of an election the expenditure is treated as having been incurred:

- on the first day on which the trade or property business commenced, and
- in the course of carrying on that trade or property business.

CIRD60065 Capital Expenditure – Capital Allowances

FA01/SCH22/PARA1 (4b)

CTA09/S1147 (8)

A company cannot make an election to treat capital expenditure as qualifying expenditure for Land Remediation Relief if it is qualifying expenditure under any of the enactments relating to capital allowances.

This includes expenditure qualifying under Capital Allowances Act 2001 for:

- Plant & Machinery Allowances
- Industrial Buildings Allowances
- Agricultural Buildings Allowances
- Business Premises Renovation Allowances
- Flat Conversion Allowances
- Mineral Extraction Allowances
- Research & Development Allowances
- Dredging Allowances

Example:

Company A incurred capital expenditure on modernising a building in a disadvantaged area. As part of the work, Company A engaged a specialist contractor to remove damaged panelling containing asbestos.

Company A cannot claim Land Remediation Relief as the building lies in a disadvantaged area and the expenditure qualifies for Business Premises

Renovation Allowances. See the Capital Allowances Manual, CA45000, for further information on Business Premises Renovation Allowances.

CIRD60070 Capital Expenditure – Capital Gains

TCGA92/S39

Where capital expenditure on qualifying land remediation is allowed as a deduction in computing the profits (losses) of a trade or property business, it is **not** an allowable deduction in computing chargeable gains or allowable losses.

CIRD60100 Excluded from the relief:

Land Remediation Relief is not available:

- Where the company, or a party connected to the company, was responsible in any way for causing the contamination or dereliction.
- Where arrangements have been put in place which either create or enhance a claim
- For cleaning up nuclear sites.

This section contains the following further guidance on these exclusions:

CIRD60105	Artificial arrangements
CIRD60115	Nuclear Sites
CIRD60120	Polluter Pays

CIRD60105 Artificial arrangements

FA01/SCH22/PARA29

CTA09/S1169

There is anti-avoidance legislation to prevent:

- artificial claims, or
- claims to Land Remediation Relief being artificially inflated.

If a company enters into **arrangements** wholly or mainly to create or enhance a claim then the amount of relief is restricted to the amount that would have been available had they not entered into those arrangements.

This applies where a company enters into an arrangement wholly or mainly to obtain:

- Land Remediation Relief to which it would not otherwise be entitled, or of a greater amount than that to which it would otherwise be entitled
- a deduction for capital expenditure which would not otherwise be allowed, or of a greater amount than would otherwise be allowed, or
- a Land Remediation Tax Credit to which it would not otherwise be entitled, or of a greater amount than that to which it would otherwise be entitled

Arrangement

The term “arrangement” is given a broad definition and includes any scheme, agreement or understanding, whether or not legally enforceable.

CIRD60115 Nuclear Sites

FA01/SCH22/PARA3 (2)

CTA09/S1145B

Expenditure on clearing up a **nuclear site** does not qualify for Land Remediation Relief. This exclusion applies equally to:

- Land remediation relief before 1 April 2009
- Land remediation relief for contaminated sites from 1 April 2009
- Land remediation relief for derelict sites from 1 April 2009

For the purposes of the relief, a nuclear site is defined as any site that:

- has a nuclear site licence under the Nuclear Installations Act 1965, or
- had a nuclear site licence in force, but the period of responsibility of the licensee has not come to an end following its revocation or surrender.

CIRD60120 Polluter Pays

FA01/Sch22/Para12 (4)
CTA09/S1150

The principle that the polluter should bear the cost of cleaning up any pollution applies for Land Remediation Relief.

A polluter, or a party connected to a polluter, cannot obtain the relief.

Who is the Polluter?

For the purposes of Land Remediation Relief, a company that is responsible (either wholly or only partly) for the land becoming contaminated or derelict is treated as the polluter and cannot have the relief. This also applies if the polluter was a person with a **relevant connection** to the company (see CIRD69020 for a definition of a person with a relevant connection).

This section contains the following guidance:

CIRD60125	More than one polluter
CIRD60130	Deliberate or accidental pollution
CIRD60135	Who is the polluter – acquiring land in a contaminated state
CIRD60140	Who has a “relevant connection” to the polluter?
CIRD60150	Polluter retains an interest in the land
CIRD60155	Polluter – “slice of the action” contracts
CIRD60160	Polluter obtains benefit of the relief

CIRD60125: More than one polluter

FA01/Sch22/Para12 (4)

CTA09/S1150 (1)

It is important to note that, as a party that is wholly or only partly responsible for the contamination is treated as the polluter, then more than one person may be treated as the polluter for the purposes of Land Remediation Relief.

There is no apportionment of responsibility for the contamination and where a company (or a person with a relevant connection) is treated as the polluter then the company cannot claim Land Remediation Relief on any part of the cost of cleaning up that contamination.

Example – Partly responsible

Company A acquires an existing factory from Company B, where the site has been contaminated by waste by-products. Company A continues to operate the site for 5 years before installing equipment to recover the by-products. Although the vast majority of the contamination took place before Company A acquired the site, the contamination continued whilst Company A operated the site.

Both Company A and Company B are treated as the polluter for the purposes of Land Remediation Relief. Company A cannot claim Land Remediation Relief in respect of any of the costs of cleaning up the contamination as it was partly responsible for the contamination. This applies even though company B was responsible for 90% of the contamination.

There is further guidance on when a company that acquires land in a contaminated state is treated as a polluter in CIRD60135 “Who is the polluter – acquiring land in a contaminated state.”

CIRD60130 Deliberate or accidental pollution:

The “polluter pays” principle applies where a company, or a person with a **relevant connection** to the company, was responsible for the contamination or dereliction.

It applies whether the pollution occurred because of something:

- the company did (such as burying contaminated waste) or
- the company failed to do (such as contamination due to oil leaks from a tank due to inadequate maintenance).

It does not matter that at the time the company took the action that caused the contamination, it was accepted practice in that industry and not thought to be contamination. If the company was responsible for contamination whose removal costs would otherwise qualify for the relief, then they cannot claim the relief.

Example – Not seen previously as pollution

A Ltd purchased a piece of land and contracted for a builder, X Ltd to construct a building on part of the site. In accordance with practice at the time, X Ltd used asbestos roofing material.

A Ltd are renovating the premises and as part of the renovations, contracted with Y Ltd, a specialist in dealing with asbestos, to remove the asbestos roofing material. During the renovations A Ltd ensure that the work is done in accordance with HSE guidelines.

A Ltd cannot claim Land Remediation Relief for the cost of removing the asbestos roofing material as they were responsible for the construction of the building. The fact that the use of asbestos roofing material was normal practice at the time (and for some years after) does not alter the position.

CIRD60135: Who is the polluter – acquiring land in a contaminated state

FA01/Sch22/Para12 (4)
CTA09/S1150 (1)

If a company acquires a site and, subsequent to their acquisition:

- existing contamination is spread by movement in the groundwater
- a change in the law, or of recommended accepted levels of contamination, means that the site is deemed to be contaminated; or
- previously unsuspected contamination is identified on the site

Then they are not automatically treated as the polluter. The contamination was already present when they acquired the site. But you have to consider whether they have caused additional contamination or have failed to take sufficient steps to contain the pollution.

A company may acquire a site in a contaminated state and not qualify for relief as it is itself partly responsible for the contamination (by continuing the process that causes the pollution).

- If a company acquires a site and continues a process that causes contamination then it is partly responsible for the contamination and cannot claim relief.
- If a company acquires a site where there is contamination due to inadequate maintenance then it will be the polluter unless it takes steps to carry out the necessary repairs within a reasonable time. How quickly they need to be carried out will depend upon the facts of the individual case.

Simply not identifying the presence of contamination when a property was acquired does not make a company responsible for the contamination. The site was contaminated at acquisition, even if it was not recognised at the time.

A company is not excluded from the relief because there is a change in the legislation or in the recommended levels of contamination. The question is whether the company is responsible for the land being contaminated. The site was contaminated at acquisition, even if it was not recognised at the time.

Example – Asbestos

Company C acquires a building which has some asbestos insulation. Company C acts in accordance with Health & Safety Executive advice and does not disturb the asbestos. It carries out maintenance in line with guidance on dealing with asbestos.

After a number of years, Company C needs to remodel the building and engages a specialist contractor to remove the asbestos.

Company C can claim Land Remediation Relief on the additional cost of engaging the contractor. Company C is not the polluter as it did not install the asbestos. Company C did not remove the asbestos immediately, but in doing so it was acting in accordance with the guidelines. In addition, during the period of ownership it has carried out the appropriate maintenance in line with the guidelines.

Example – delay in cleaning up a site

A Ltd acquires a former industrial site with a disused fuel tank. The land around the tank has been contaminated by fuel seeping from the tank. Re-development of the site is delayed, but after 4 years A Ltd carries out work to remove the tank and clean up the surrounding contaminated soil.

The question is whether there has been any additional contamination as a result of the delay before the site was de-contaminated. In this case, A Ltd acquired a site with an empty disused fuel tank; it is therefore unlikely that there has been any additional contamination and A Ltd can therefore claim Land Remediation Relief on the cost of cleaning up the soil. As a contrast, if the tank had still contained a significant level of fuel when acquired and this had continued to leak then A Ltd's inaction in not timeously attending to the leak would have contributed to the pollution and A Ltd would not qualify for Land Remediation Relief.

A Ltd cannot claim Land Remediation Relief on the cost of removing the tanks as this cost would have been incurred even if the soil had not been contaminated.

Had the tanks been used for storing hazardous chemicals that meant additional work had to be taken to remove the tank safely, then the additional cost would qualify for Land Remediation Relief.

CIRD60140 “Polluter Pays” – Who has a “relevant connection” to the polluter?

FA01/Sch22/Para31 (4)
CTA09/S1178

Land Remediation Relief is not available if the land is in a contaminated or derelict state wholly or partly as a result of anything done, or not done, at any time by a person other than the claimant company, if:

- the person was connected to the company at that time.
- the person was connected to the company at the time when the land was acquired, or
- the person was connected to the company at any time when the land remediation is, or was, undertaken by the company.

The question of whether a person is **connected** to a company is determined in accordance with the provisions of ICTA88/S839 (connected persons).

Example – Connected Party

Company A operated a factory. In the course of their operations asbestos waste was buried on the site. Twenty years later the factory has closed and the site has been transferred to a group company, Company B, to be redeveloped. As part of the work, Company B removes all the asbestos waste.

As a connected party of the polluter, Company B cannot claim Land Remediation Relief

CIRD60150 Polluter retains an interest in the land: 1 April 2009 onwards

CTA09/S1150 (2) & (3)

Land Remediation Relief is not available if the party (or a connected party) responsible for the land being contaminated or derelict retains an interest in the land.

An interest in the land is retained:

- where the polluter disposes of the legal title to the land, whether freehold or leasehold, but retains a beneficial interest in it
- where the entire legal (or beneficial) interest in the property is sold, but as part of the contract for sale the polluter is granted a right (an option) to be offered the property should the purchaser subsequently wish to sell.

Example:

Company A was responsible for an area of land being polluted. Company A grants a 15 year lease over the land to Company B, which decontaminates the land before it commences operations from the site.

Although Company B has a major interest in the land (see CIR69015) it cannot claim Land Remediation Relief as its landlord was responsible for the pollution.

Example:

Company A was responsible for an area of land being polluted. It sells the land to an unconnected third party, Company B, which decontaminates the site. Company A has an option to reacquire the land after it has been cleaned up.

Although Company B has a major interest in the land (see CIR69015) it cannot claim Land Remediation Relief as Company A was responsible for the pollution and has an option over the land.

CIR60155 Polluter – “slice of the action” contracts: 1 April 2009 onwards

CTA09/S1150 (3)(b)

'Slice of the action' contracts are so called because they confer upon a landowner (who holds the land as an investment) the right to share in the proceeds of any subsequent development by the purchaser. In these cases the contract for sale of the land to a builder or developer provides for consideration that is, in whole or in part, contingent upon the successful development and sale of the land.

A common arrangement is for the landowner to receive a fixed sum at the time of the disposal, plus a percentage of the sale proceeds of each building subsequently constructed by the purchaser on the land.

If the polluter (or a party connected to the polluter) enters into a slice of the action contract, then the builder or developer is not entitled to Land Remediation Relief.

Example:

Company A was responsible for an area of land being polluted. It sells the land to an unconnected third party, Company B, which decontaminates the site. Under the sale agreement, the final sale price payable to Company A depends on the sale proceeds received by Company B.

Although Company B has a major interest in the land (see CIR69015) it cannot claim Land Remediation Relief as Company A was responsible for the

pollution and as the agreement was a slice of the action contract, the sale price reflects the impact of decontamination.

CIRD60160 Polluter obtains benefit of the relief:

CTA09/S1150 (3)(b)

The legislation excludes from the relief cases where the land is sold by the polluter (or a person with a relevant connection to the polluter) and the sale price agreed reflects the value of the land in a decontaminated state.

Example:

A Ltd are responsible for contaminating Site X, which lies in an area where there is high demand for land. The result is that developer B wants to acquire Site X and agrees to pay A Ltd a price closer to the price that the land would have fetched had it been uncontaminated.

Due to the local market conditions, A Ltd, the polluter, is being paid a price that does not reflect the true state of the land. Developer B cannot therefore claim Land Remediation Relief.

This is an anti-avoidance provision. Before entering into argument, Officers of HMRC should make a report of the facts to CT&VAT (CALOR).

CIRD61000: What is “land in a contaminated state”?

Land Remediation Relief was introduced in 2001 to encourage the re-development of land that has been blighted due to contamination from previous industrial use.

Feed-back from industry has indicated that a lack of certainty over whether or not particular work will qualify for the relief has meant that the availability of Land Remediation Relief has not influenced developers' decisions over which sites to re-develop.

Land Remediation Relief for land in a contaminated state has been amended for expenditure incurred on or after 1 April 2009 so that, on the basis of work carried out as part of the planning process, developers will be able to see at an early stage in the re-development, which work will qualify for Land Remediation Relief. The intention is that knowledge of the availability of Land Remediation Relief will positively influence developers' decisions as to which sites to re-develop.

In view of these changes, this section looks at land in a contaminated state in two parts:

CIRD61001	What is "land in a contaminated state"? – up to 31 March 2009
CIRD61200	What is "land in a contaminated state"? – from 1 April 2009

CIRD61001 - What is “land in a contaminated state”? – Up to 31 March 2009

In this guidance, the term 'land in a contaminated state' should not be confused with the phrase 'contaminated land' in a state' as defined in the Environmental Protection Act, Part IIA.

This section looks at the question of what type of contamination qualifies for the relief and, secondly, what type of work qualifies for relief. It contains the following guidance:

CIRD61005	Land in a Contaminated State
CIRD61050	Relevant land remediation

CIRD61005 Land in a Contaminated State

FA01/SCH22/PARA3

This guidance is for expenditure incurred on or before 31 March 2009.

Land is in a contaminated state for the purposes of Land Remediation Relief, if, and only if, **substances** in, on or under the land are actually or potentially causing:

- **harm**, or
- the pollution of controlled waters.

Nuclear sites are specifically excluded from the definition of “land in a contaminated state” see CIRD60115.

“**Substance**”:

FA01/SCH22/PARA31 (1)

A “substance” for the purposes of Land Remediation Relief is any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

Until 24 November 2008 HMRC took the view that the term “substance” could not include a life-form. On 24 November 2008, however, HMRC published a change of view, and now accept that a plant can be a substance for the purposes of Land Remediation Relief. A copy of the change of view statement issued on 24 November 2008 is at CIRD61020.

For periods before 1 April 2009, Land Remediation Relief did not distinguish between substances that were present as a result of industrial activities and those that were present as a result of naturally occurring processes.

“Harm”

FA01/SCH22/PARA31 (1)

“Harm” in this context means:

- harm to the health of living organisms,
- interference with the ecological systems of which any living organisms form part,
- offence to the senses of human beings, or
- damage to property.

The likelihood of harm being caused will vary according to the land use.

This section contains the following further guidance:

CIRD61010	Land in a contaminated state: Example
CIRD61015	Japanese knotweed
CIRD61020	Japanese knotweed – change of view statement
CIRD61025	Burials
CIRD61030	Voids and spaces

CIRD61010 Land in a contaminated state: Example

This guidance is for expenditure incurred on or before 31 March 2009.

This example should be read together with the guidance in CIRD61005.

Example:

A Ltd acquires a derelict site from an unconnected party, that:

- is contaminated by asbestos from a previous industrial use
- has an infestation of Japanese knotweed caused by fly-tipping
- has a shaft dug into the site where machinery was previously installed; and
- has high levels of naturally occurring radon.

A Ltd builds a office building on the site, to prepare the site it carries out work including

- clearing up the asbestos and removing the waste to landfill
- chemical eradication of the Japanese knotweed
- filling in the hole; and
- installing a membrane to prevent radon seeping into the new building

A Ltd can claim Land Remediation Relief on the removal of asbestos and Japanese knotweed as these are substances present in or on the land.

A Ltd can claim Land Remediation Relief on the cost of installing the membrane (including the cost of the membrane) as it is preventing harm by a substance in the ground.

A Ltd cannot claim Land Remediation Relief on filling in the hole, as there is no substance present causing harm, see CIRD61030.

CIRD61015 Japanese knotweed

This guidance applies for expenditure incurred on or before 31 March 2009.

Japanese knotweed (*Fallopia japonica*) was introduced to the UK in Victorian times both as an ornamental garden plant and also to stabilize embankments along railways and canals. Lacking natural predators in the UK and capable of regenerating from a small piece of rhizome, it is especially difficult to eradicate. It is also unusually invasive and destructive: for example, it is capable of pushing through tarmac.

As a plant, Japanese Knotweed is a substance. It is also sufficiently invasive and destructive that it satisfies the “harm” test, and HMRC accept that land infested with Japanese Knotweed is “land in a contaminated state” for the purposes of Land Remediation Relief. This change of view was announced on 24 November 2008, a copy of the statement can be found at CIRD61015.

Relief is not available where the company (or a connected party) was responsible for introducing the Japanese Knotweed (the “polluter pays” principle).

Expenditure incurred on or before 31 March 2009 on removing Japanese Knotweed will qualify for relief only if the Japanese Knotweed was present when the claimant company acquired its interest in the land. Relief is therefore not available where the Japanese Knotweed was introduced, for instance by fly-tipping, whilst the site was owned by the company (or by a connected party).

The Government has announced its intention to restrict the types of remedial work that will attract relief. The intention is that expenditure on the removal of Japanese Knotweed to landfill will not qualify for relief from a date to be announced.

This restriction does not apply for expenditure incurred on or before 31 March 2009. There is no restriction on the treatment method used for these periods.

CIRD61020 Japanese Knotweed – Change of view

HMRC published the following change of view statement on 24 November 2008.

2.1. Japanese knotweed (“*Fallopia japonica*”) was introduced to the UK in Victorian times both as an ornamental garden plant and also to stabilize embankments along railways and canals. Lacking natural

predators in the UK and capable of regenerating from a small piece of rhizome, it is especially difficult to eradicate. It is also unusually invasive and destructive: for example, it is capable of pushing through tarmac.

2.2. Japanese knotweed is listed on Schedule 9 and subject to section 14 of the Wildlife and Countryside Act 1981. It is an offence to plant, or cause Japanese knotweed to grow, in the wild.

2.3. Under the existing legislation, land is contaminated for the purposes of LRR if there is a substance present that is causing, or has the potential to cause, harm.

2.4. The term substance is defined at Paragraph 31 (1) of Schedule 22 to the

Finance Act 2001, which states that:

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

2.5. In the Corporate Intangibles, Research and Development Manual, HMRC states at CIR60135 that it interprets this as meaning that that:

“A substance is matter having uniform properties. So, for example, asbestos is a substance but life forms are not.”

2.6. HMRC now accepts that Japanese knotweed is sufficiently invasive and destructive that it satisfies the “harm” test and that land infested with Japanese knotweed is contaminated for the purposes of LRR.

2.7. The Government has previously announced its intention to extend the scope of LRR to provide relief for expenditure incurred on clearing Japanese knotweed, excluding clearance by removal to landfill sites.

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2.8. HMRC now accepts that the costs of clearing Japanese knotweed will qualify for relief. However, the Government believes that it should legislate to provide greater certainty about the circumstances in which LRR can be claimed.

2.9. Under the existing LRR there is no restriction on the method of remediation and currently the costs of removal to a landfill site qualify for LRR.

2.10. As with any contaminant, claims for relief in respect of clearing Japanese knotweed must satisfy all of the other legislative tests. For example, relief is not available where the Japanese knotweed was planted by the claimant (or a connected party) or where it spread to the site during the period of ownership, for instance by fly-tipping.

2.11. HMRC will settle any open claims for LRR in respect of Japanese knotweed on this basis. It will approach any new claims for in-date years on the same basis.

CIRD61025 –Burials

This guidance is for expenditure incurred on or before 31 March 2009.

The presence of burials on a site does not constitute an offence to the senses of human beings. The cost of their removal is therefore not, normally, qualifying land remediation expenditure.

However, some burials may pose a health risk, particularly if disturbed; for example so-called “plague pits”. Where this is the case the land is in a contaminated state for the purposes of this legislation. Where there is a requirement that such burials are moved to enable the site to be developed, provided all other relevant conditions are satisfied, the additional costs of providing protection against the potential health risk is qualifying land remediation expenditure.

CIRD61030 – Voids and spaces

This guidance is for expenditure incurred on or before 31 March 2009.

Expenditure on filling in a void or space, or compacting the ground so that it can be built upon, does not qualify for Land Remediation Relief.

This is because the potential harm is not caused by the presence of a substance. The problem is caused by the lack of a substance or the structure of the soil.

Expenditure on filling in a hole, created during the remediation process by the removal of contaminated waste, qualifies for Land Remediation Relief as it is restoring the site to its previous condition (FA01/Sch22/Para4 (3)(b)).

CIRD61050 – “Relevant land remediation”

FA01/Sch22/Para4

This guidance is for expenditure incurred on or before 31 March 2009.

This section, together with those following, looks at the type of work that qualifies for Land Remediation Relief.

“Relevant land remediation” means activities whose purpose is:

- preventing or minimising, or remedying or mitigating the effects of, any harm, or pollution of controlled waters, by reason of which the land is in a contaminated state, or
- restoring the land or polluted waters to their former state.

Relevant land remediation is not restricted to those activities needed to restore the land to a state in which planning permission can be obtained. If, for commercial reasons, a company chooses to restore the land to a higher standard than the relevant land remediation includes those activities whose purpose is to restore the land to that higher standard.

Activities

The activities include the carrying out of any works, operations, or the taking of any steps in relation to:

- the land acquired in a contaminated state,
- any controlled waters affected by that land, or
- any land adjoining or adjacent to that land.

This section has the following further guidance:

CIRD61055	Preventing, minimising, remedying or mitigating
CIRD61085	Different grades of cement
CIRD61090	Foundations

CIRD61055 Preventing, minimising, remedying or mitigating:

FA01/Sch22/Para4

There is a very wide range of measures that are used to address the problem of land in a contaminated state.

For expenditure incurred on or before 31 March 2009, there is no specific exclusion of any specific form of remediation.

It is not possible to list all the methods that qualify for Land Remediation Relief. The following sections give additional guidance on some of the methods used.

CIRD61060	Cover Systems
CIRD60165	In ground barriers and cut off systems
CIRD60170	Dig and dump
CIRD60175	Biological Treatment
CIRD60180	Cement based stabilisation

CIRD61060 Cover systems

This guidance is for expenditure incurred on or before 31 March 2009.

Cover systems involve placing a layer over the contaminated ground. They are often used where the level of contamination is only a little above the recommended limits for that type of site. Cover systems do not remove the contamination, but they can reduce actual harm or the potential to cause harm.

Example:

A Ltd are developing a housing estate. On part of the site, the level of contamination is above the soil guideline value (see CIRD61335).

A Ltd install a cover system to prevent take up of contamination by home-grown vegetables.

A Ltd can claim Land Remediation Relief on the cost of installing the cover system. The land was contaminated for the purposes of Land Remediation Relief as the level of contamination exceeded the soil guideline value for that type of housing development and A Ltd installed the cover system to minimise the potential harm.

CIRD 61065 In-ground barriers and cut-off walls

This guidance is for expenditure incurred on or before 31 March 2009.

This technique does not remove the contamination and instead it contains the contamination by building a barrier around it. The barriers may be built of sheet piles, geo-membranes or a cement based slurry.

The nature of a barrier, such as cement based slurry can be varied according to the nature of the contamination present.

Example:

A Ltd are developing a housing estate. There is contamination on part of the site. To prevent contamination of the rest of the site, A Ltd installs a barrier to prevent the contamination leaching onto the rest of the site.

A Ltd can claim Land Remediation Relief as it is preventing the potential harm by containing the contamination.

CIRD61070 Dig and dump:

This guidance is for expenditure incurred on or before 31 March 2009.

“Dig and dump” is the term used to describe the excavation of contaminated material and its removal to landfill.

Example:

A Ltd acquire a site for re-development. Waste by-products containing asbestos were buried on the site and A Ltd conclude that the only option is to dig the waste up and dispose of it in landfill. A Ltd engages the services of a specialist contractor to remove and dispose of the asbestos.

A Ltd can claim Land Remediation Relief as it is remedying the problem of asbestos. A Ltd can also claim Land Remediation Relief on the costs of filling in the hole created by the removal of the asbestos waste, as this restores the ground surface to its previous state (FA01/Sch22/Para4 (3)(b)).

Expenditure incurred on or before 31 March 2009 on the remediation of Japanese knotweed by dig and dump will qualify for Land Remediation Relief, if the other conditions are satisfied.

CIRD61075 Biological treatment

This guidance is for expenditure incurred on or before 31 March 2009.

Biological treatment can take place in situ or the material can be excavated and taken to a treatment centre. Treatment can involve stimulating the naturally occurring microbial communities or the introduction of other microbes to break down the contaminants.

Example:

A Ltd acquire a redundant petrol station from an unconnected party, where there has been contamination by leaking fuel. They use an off-site biological treatment to remove the contamination before replacing the soil.

A Ltd can claim Land Remediation Relief as the treatment has remedied the problem by removing the contamination. Qualifying expenditure includes the cost of returning the soil to the site.

CIRD61080 Cement based stabilisation

This guidance is for expenditure incurred on or before 31 March 2009.

This method is also referred to as stabilisation/solidification. It is used for a wide range of contamination, including metals, resin, tar and PCBs.

A cement based material is used to chemically stabilise and also contain the contaminants in situ. The contamination is effectively sealed within a block in the ground.

Expenditure on cement based stabilisation can qualify for Land Remediation Relief as it is preventing the potential harm by containing the contamination.

CIRD61085 Different grades of Cement:

FA01/Sch22/Para4

This guidance is for expenditure incurred on or before 31 March 2009.

It may be necessary to use a different quality of cement due to the presence of contaminants in the soil such as iron sulphates.

Some of these contaminants are present by natural process, others as a result of industrial activity. For expenditure incurred up to 31 March 2009, it does not matter whether the contamination is present as a result of natural or industrial processes.

Land Remediation Relief will be available for the additional cost arising from having to use a higher grade of cement or concrete because of the risk of harm to the building or structure.

HMRC accept that the “harm” test is satisfied where a higher grade of concrete or cement is required to comply with the appropriate British Standard.

Example:

X Ltd acquires a site for re-development. The desk study shows that the site had been previously used as a dump for rubble by an unconnected developer. Further work shows that the site has high levels of sulphate. X Ltd uses higher grade cement in line with the British Standard.

X Ltd can claim Land Remediation Relief on the additional cost of using the higher grade cement as the sulphate contamination poses a potential threat to the building and X Ltd has acted in accordance with the British Standard applicable at the time.

CIRD61090 Foundations

This guidance is for expenditure incurred on or before 31 March 2009.

During the course of remediation the land may be disturbed. A subsequent development may need more substantial foundations because the land has been disturbed.

The cost of the more substantial foundations does not qualify for Land Remediation Relief as the expenditure does not prevent, minimise, remediate or mitigate the contamination. This has already been done.

Moreover the need for more substantial foundations arises from the actions of the claimant.

CIRD61200 - What is “land in a contaminated state”? – From 1 April 2009

This section looks at how Land Remediation Relief applies to expenditure incurred on or after 1 April 2009 to remediate land in a contaminated state.

This section contains the following guidance:

CIRD61201	Transitional rules for pre-trading expenditure
CIRD61205	Land in a Contaminated State
CIRD61210	Exclusions
CIRD61250	Industrial Activity
CIRD61300	Relevant Harm
CIRD61400	Natural Contaminants
CIRD61500	Relevant Contaminated Land Remediation

CIRD61201 Transitional rules for pre-trading expenditure:

ICTA88/S401
CTA09/S61

Where a company incurs qualifying expenditure for the purposes of its trade or profession before it commences trading, it is treated under the rules for pre-trading expenditure as having incurred the expenditure on the day that it commences trading, see the Business Income Manual, BIM46350.

If a company starts trading on or after 1 April 2009, and, before that date it has incurred expenditure on land remediation, which is treated under the pre-trading expenditure legislation as being incurred on the first day of trading then the rules for Land Remediation Relief that apply are those applying **when the expenditure was actually incurred**, see CIRD61001.

CIRD61205 Land in a Contaminated State

CTA09/S1145

This guidance applies for expenditure incurred on or after 1 April 2009.

Land is in a contaminated state only if there is something in, on or under the land which causes “relevant harm”, or there is a serious possibility that “relevant harm” will be caused.

The level of risk from a contaminant will vary according to the land use. This is reflected in the approach in planning guidance in the UK, which is to ensure that land is in a fit state for its current or intended use.

For expenditure to qualify for Land Remediation Relief, the contamination must also be present as a result of industrial activity– see CIRD61250. There are a few exceptions to this rule introduced by the Treasury under powers to extend Land Remediation Relief, by Order. The Treasury has used the powers to extend the relief to include expenditure on treating land contaminated by Japanese Knotweed, radon and arsenic.

You should not view the question of what constitutes “land in a contaminated state” for the purposes of Land Remediation Relief in isolation. There is extensive planning guidance for those dealing with land in a contaminated state. A developer following best practice should have already gathered the information needed to show whether or not the land is contaminated for the purposes of Land Remediation Relief before the physical development commences.

The following guidance looks at how it can be shown whether or not the test is satisfied and also at what is specifically excluded from being land in a contaminated state:

CIRD61210	Exclusions
CIRD61250	Industrial activities
CIRD61300	Relevant Harm
CIRD61400	Natural Contaminants
CIRD61500	Relevant Contaminated Land Remediation

CIRD61210 Exclusions:

The legislation identifies a number of situations in which land is not “in a contaminated state” and so does not qualify for Land Remediation Relief.

This section contains the following guidance:

CIRD61215	Exclusions: Air & Water
CIRD61220	Exclusions: Living organisms

CIRD61215 Exclusions: Air & Water

CTA09/S1145 (2)(a)

From 1 April 2009, for the avoidance of doubt, land is not “in a contaminated state” as a result of the presence of air or water.

The land may, however, be in a contaminated state as a result of pollutants present in the air or water.

Example:

A Ltd purchases a site with a high groundwater table. As a legacy from previous industrial activity there are high levels of sulphates in the groundwater. A Ltd install additional drainage to lower the local water table and use a higher grade of cement, in line with BSI guidance, to deal with the presence of sulphates.

As the levels of sulphate are sufficient to have the potential to cause relevant harm (see CIRD61505), then A Ltd can claim Land Remediation Relief on additional costs incurred in dealing with the problem. Land Remediation Relief is not available for the drainage works.

CIRD61220 Exclusions: Living organisms

CTA09/S1145 (2)(a)

This section applies to expenditure incurred on or after 1 April 2009

For the purposes of land remediation relief, land is not in a contaminated state as a result of the presence of living organisms or decaying matter from living organisms.

Burials:

Burials are decaying matter from living organisms and so expenditure on removal does not qualify for Land Remediation Relief.

Animal droppings:

Animal or bird droppings are decaying matter from living organisms and so expenditure on removal does not qualify for Land Remediation Relief.

Hydrocarbons

Hydrocarbons, such as diesel or petrol, are too remote from the original living organisms, so removal expenditure is not excluded from the relief.

Hydrocarbons present as a result of natural processes do not qualify for Land Remediation Relief.

Exceptions

There is provision to extend Land Remediation Relief to specific living organisms or decaying matter from living organisms by secondary legislation.

Only expenditure incurred in removing those living organisms specified in the secondary legislation qualifies for Land Remediation Relief. The secondary legislation does not work by analogy: unless an organism is specifically listed, eradication costs do not qualify.

These powers have been used to extend the relief to the costs of removing Japanese Knotweed see CIRD61430.

CIRD61250 Industrial activities:

CTA09/S1145 (2)(b)

Land Remediation Relief is intended to assist in bringing back into productive use land that has been blighted by contamination from previous **industrial activity**.

The requirement is that the contamination is present as a result of industrial activity.

“Industrial activity” **includes, but is not limited to**, any activity within UK SIC 92 categories C, D, E & F. These are

- Mining and quarrying – including extraction of fuels, minerals and oils
- Manufacturing – including fuel processing and production, manufacture of chemicals and man-made fibres, the metal goods, engineering and vehicles industries and other manufacturing industries
- Supply of electricity, gas and water - the production and distribution of electricity, gas and water
- Construction industry

The requirement that contamination is from industrial activity does not mean that the site must have been in use in an activity within these categories. Contamination may be present as a result of the use of the products of an industrial activity even where the land has been used for other purposes.

For example, asbestos is present in a building, as a result of industrial activity (the construction industry) even where the building is used as a shop or office.

Example:

A Ltd acquires offices which contain asbestos panelling. They are advised that the panels have not been maintained in accordance with the guidelines and that the panels should be removed.

Although the building has not been used for an industrial activity, the asbestos is present as a result of industrial activity (the construction industry). A Ltd is not the polluter and acquired the property in a contaminated state. A Ltd can claim Land Remediation Relief on the additional costs incurred in removing the asbestos panelling.

Other activities may qualify as “industrial activities”:

Example:

B Ltd acquires, from an unconnected third party, a farm complex that had recently fallen out of use. Before they can re-develop the site they have to remove contamination due to spillages of chemical fertiliser.

B Ltd can claim Land Remediation Relief because the chemical contamination caused to the land is a consequence of the agricultural industry.

For guidance on how to establish whether contamination is present as a result of industrial activity see CIR61255.

CIR61255 Non industrial contamination:

CTA09/S1145 (3)

The legislation allows for contaminants that are present as a result of non industrial activities to be brought within the scope of Land Remediation Relief by secondary legislation.

These exceptions are specific; other, seemingly closely related, items do not attract relief 'by analogy'.

For further information on this point see CIR61400

CIR61260 Evidence for Industrial activity

CTA09/S1145 (2)(b)

In most cases, the evidence that HMRC will be looking for will have been gathered by a developer working on land in a contaminated state during the preliminary risk assessment carried out as part of the planning process.

For example, a developer has to identify and assess the potential hazards on a site as part of the process of applying for planning permission. This includes identifying the history of the site and its environmental setting as these will indicate the potential for contamination on the site.

As part of the preliminary risk assessment, it is good practice to carry out what is often called a **desk study**. For example, a local authority will usually require that a desk study must be submitted along with the outline planning application. Where there is potential contamination then the developer will need to carry out additional investigations that may include a site reconnaissance and exploratory site investigation.

HMRC will accept the evidence presented within a preliminary risk assessment report as evidence of the probable cause of the pollution. The risk assessment will include a map reference and details to identify the specific area covered.

Where no desk study has been carried out, HMRC would accept evidence of the type that is used in a desk study:

CIR61265 Evidence for industrial activity: Preliminary risk assessment:

A key part of the preliminary risk assessment is to establish the history of the site. The desk study that forms part of this assessment provides an indication of what contaminants are likely to be present on the site.

To identify that the desk study is for the correct site, the report will contain a six figure National Grid Reference to identify the precise site that it deals with.

The type of evidence that a desk study may contain includes:

- Historic maps – it is important to note that the contamination could have been carried into the site from adjoining areas.
- Historic photographs
- Previous planning history
- Historical information such as contemporary business directories
- Local history publications or corporate histories
- Evidence as to the underlying geology – this is particularly important as it should show whether it is possible that the contamination could have occurred naturally. That there is no natural source of the contamination is a strong indicator that it has been introduced by man.

Some of the data may have been obtained from a commercial supplier. Planning guidance is that this on its own is not a desk study.

CIRD61270 Evidence for industrial activity: Industry Profiles:

The Environment Agency web-site has DoE Industry Profiles which provide information on the processes, materials and waste leading to contamination of the land associated with particular industries.

If the underlying geology means that the contamination is unlikely to be natural and the DoE Industry Profile shows the contamination is associated with a previous use of the site then HMRC will accept that the contamination arose from industrial activity.

CIRD61275 Evidence for industrial activity: examples

This section sets out some examples of how HMRC will approach the evidence for industrial activity.

Example:

A Ltd acquires a plot of land with a view to re-development. The desk study shows that there is a potential hazard from lead contamination from a previous industrial use on the site. A Ltd carries out further work and establishes that the level of lead contamination exceeds the soil guideline value (see CIRD61335) for the proposed land use.

HMRC would accept that the contamination in this case is from industrial activity.

Example

Company B is carrying out repairs on its premises. It discovers the presence of chemical contamination. It establishes that it does not arise naturally on that soil type. From historic maps and local history records, it establishes that that the site was previously used to dispose of industrial waste by a company whose processes produce contamination of that type, as shown in the DoE Industry profile.

HMRC would accept that the contamination in this case is from industrial activity.

Example:

Company C acquires a site with significant levels of sulphate. The desk study shows that the site rests on rock strata rich in sulphate. The previous activity on the site was not one associated with sulphate pollution.

The contamination is present as a result of the decay of the underlying rock, not as a result of industrial activity. Company C cannot claim Land Remediation Relief.

Example:

Company D acquires a site with significant levels of sulphate. The desk study shows that the underlying geology is unlikely to be the source. Further work shows that the site had been used as a dump for rubble from a 1930s housing development. The rubble includes plaster which is found to be rich in sulphate. To deal with the problem, Company D uses a higher grade of cement in line with the British Standard applying at that time.

As the contamination is present as a result of industrial activity, Company D can claim Land Remediation Relief on the additional costs incurred (if the other conditions are satisfied).

CIRD61300 “Relevant Harm”:

CTA09/S1145

Land is in a contaminated state if **relevant harm** is being caused or there is a serious possibility that relevant harm will be caused.

“Relevant harm” is defined as meaning:

- (a) death of living organisms or significant injury or damage to living organisms,
- (b) significant pollution of controlled waters,
- (c) a significant adverse impact on the ecosystem, or
- (d) structural or other significant damage to buildings or other structures or interference with buildings or other structures that significantly compromises their use.

HMRC accept that the likelihood of relevant harm occurring will vary according to the land use.

In many cases, the evidence needed to show whether or not these tests have been satisfied will have been gathered as part of the planning process, before the work is even carried out.

This section contains the following further guidance on establishing whether or not relevant harm is being caused or there is a serious possibility that relevant harm will be caused:

CIRD61305	Relevant harm to buildings
CIRD61315	Relevant harm and the planning system
CIRD61320	Relevant harm: Guidance on developing contaminated sites
CIRD61325	Risk Assessments
CIRD61330	Categorisation of risk
CIRD61335	Soil guideline values

CIRD61305 Relevant harm to buildings

CTA09/S1145 (4)(d)

Relevant harm to a building or structure is structural or other significant damage or interference that significantly compromises the use of the building.

For example, the presence of asbestos would cause relevant harm if it meant that one floor of an eight storey building had to be sealed off and could not be used until remedial action had been taken.

A further example of relevant harm to buildings is the problems caused by sulphates on certain types of cement. For further information on this see CIRD61530

CIRD61315 Relevant harm and the planning system:

Land Remediation Relief should not be seen in isolation. It is part of the wider approach to dealing with the problem of land in a contaminated state.

The planning systems around the UK are also part of the approach to re-developing land in a contaminated state.

This guidance looks at the overlap between Land Remediation Relief and the planning systems. In particular it looks at where HMRC will accept the evidence that a developer will have gathered as part of the planning process. In many cases, a developer will know from the evidence gathered as part of the planning process that they are (or are not) able to claim Land Remediation Relief on the work carried out.

The planning rules in the different parts of the United Kingdom are intended to ensure that land is in a fit state for its current or intended use. The underlying basis is that the level of risk will vary according to the land use.

CIRD61320 Relevant harm: Guidance on developing contaminated sites:

The Authorities around the United Kingdom have published guidance for local planning authorities and developers on developing land in a contaminated state.

For example in England there is Planning Policy Statement PPS23, Planning and Pollution Control whilst the Scottish Executive has published Planning Advice Note PAN33, Development of Contaminated Land.

Defra and the Environment Agency have published the Model Procedures for the Management of Land Contamination (CLR11), which provides the technical framework for structured decision-making about land contamination. They are intended to assist all those involved in “managing” the land – in particular landowners, developers, industry, professional advisors, planners and regulators.

In addition “Guidance for the Safe Development of Housing on Land Affected by Contamination R&D66” 2008 has been published on behalf of the National House Building Council, the Environment Agency and the Chartered Institute of Environmental Health.

The planning environment is not a static arena. The guidance provided to developers and planning authorities is updated from time to time to reflect developments in best practice.

Planning applications:

A local planning authority may ask for a preliminary risk assessment to be submitted along with the planning application. The purpose of the preliminary risk assessment is to develop an initial understanding of the site and its circumstances, the likelihood for contamination, and to establish whether or not there are potentially unacceptable risks.

In cases where potentially unacceptable risks have been identified, the local planning authority will usually ask for further steps for risk assessment including a more detailed site investigation, quantitative risk assessment, and where appropriate a remediation strategy.

CIRD61325 Risk Assessments:

When dealing with land potentially affected by contamination, it is good practice to undertake a risk assessment to decide what work, if any, should be done to make the site suitable for its current or proposed use.

There is a lot of technical and procedural guidance to advise an assessor on how to carry out a risk assessment for land contamination. It is important that appropriate expertise is used because of the differences in approach to assessing risks to human health, buildings, ecosystems, and the pollution of controlled waters.

For example, the Contaminated Land Exposure Assessment (“CLEA”) model and its supporting framework guidance provides an approach to assess the risks only posed to human health from long-term exposure. This guidance does not consider short-term risks to human health or any risk to other receptors such as buildings or controlled waters.

HMRC Approach:

If, as part of the management process, a company carries out an appropriate risk assessment, HMRC will accept the results of the risk assessment submitted to the local planning authority as evidence of the level of contamination, provided that the risk assessment has been carried out in accordance with the appropriate guidance and standards applying at that time for that type of site.

Example:

A Ltd carries out a risk assessment and establishes that the level of a particular contaminant exceeds the soil guideline value for that type of proposed land use. A Ltd takes steps to mitigate the relevant harm by capping over the contaminated layer.

Before A Ltd claims Land Remediation Relief, revised guidance is issued. Under the revised guidance, the level of risk from that contaminant in that type of soil is reduced. A risk assessment under the

new guidance would have found that the soil guideline value was not exceeded.

A Ltd can claim Land Remediation Relief on the costs of the capping layer as at the time the work was carried out; it was considered that there was a serious possibility of relevant harm.

CIRD61330 Categorisation of risk:

The question is how the results of a risk assessment carried out as part of the planning process compare to the statutory definition of “relevant harm” for Land Remediation Relief.

In some cases there are trigger thresholds such as soil guideline values (see CIRD61315). In other cases the developer will have to carry out a qualitative risk assessment.

Example:

A Ltd carries out a risk assessment and decides that there is a risk of harm to human health if they do not carry out appropriate remediation, but that if any harm were to occur it would probably be relatively mild.

A Ltd cannot claim Land Remediation Relief as the health implications are low.

Example:

B Ltd establishes that there is contamination present on the site. They carry out a risk assessment and decide that harm is likely to be caused unless they take remedial action. They also establish that the impact on human health would be severe enough that they would be unable to obtain planning permission for the proposed land use.

B Ltd can claim Land Remediation Relief as there is a high probability that the contamination would cause harm and that the harm would be severe enough to prevent re-use of the site.

CIRD61335 Soil Guideline Values

HMRC accept that land is in a contaminated state for the purposes of Land Remediation Relief where the level of contamination from industrial activity exceeds the soil guideline value for that land use (or the proposed land use); provided that the soil guideline value has been used in accordance with the guidance issued by the Environment Agency.

What are soil guideline values?

Soil guideline values are scientifically based assessment criteria designed to assist in evaluating the long term risks to human health from chemical contamination in the soil. The way that they work is that where the level of a

particular contaminant exceeds the soil guideline value, then it may pose a significant risk to human health.

There are different soil guideline values which apply to different types of land use, such as residential, allotments and industrial/commercial. For Land Remediation Relief purposes, the value to be used in any case is determined by the land use, or the use to which it is to be put as the case may be.

In addition the Environment Agency set out where soil guideline values should not be used; for example they should not be used to evaluate the risk to animals.

Soil guideline values are currently only provided for a limited range of common land use scenarios. There is guidance for developers that where there is no soil guideline value for that land use, the soil guideline value for a more sensitive use can provide a conservative assessment of the risk.

If a developer follows these guidelines as part of the planning process then HMRC accept that this is an appropriate use of soil guideline values and if the level of contamination exceeds the soil guideline values on this basis, then the land is contaminated for the purposes of Land Remediation Relief.

CIRD61400 Natural contaminants

CTA09/S1145 (2)(b) & (3)

This guidance applies to expenditure incurred on or after 1 April 2009.

From 1 April 2009, Land Remediation Relief may be claimed for removing contamination arising from former industrial activity.

As a general principle, expenditure on removing living organisms and other naturally occurring contaminants does not qualify for relief.

Some living organisms or naturally occurring contaminants may be so expensive to deal with that they represent a significant obstacle to redevelopment. To deal with this, the Treasury has powers that allow specific naturally occurring contaminants to be brought within the scope of the relief by secondary legislation.

To date three natural contaminants have been brought within the scope of Land Remediation Relief: Japanese knotweed, radon and arsenic.

These three listed exceptions are specific; other, seemingly closely related, items do not attract relief 'by analogy'.

This section contains the following guidance on how Land Remediation Relief applies to these contaminants:

CIRD61405	Arsenic
CIRD61420	Radon
CIRD61430	Japanese knotweed

CIRD61405 Arsenic:

CTA09/S1145 (3) & Secondary legislation

The requirement that the contamination must be present as a result of industrial activity does not apply to arsenic or arsenical compounds.

Arsenic (a toxic carcinogen which readily pollutes water supplies) and arsenical compounds may be present either naturally or as a result of industrial activity. It can sometimes be difficult to identify the origin of the contamination.

Because it is specifically included in the list of qualifying naturally occurring contaminants (CIRD61400) you do not have to identify the cause of Arsenic contamination.

CIRD61420 Radon:

CTA09/S1145 (3) & Secondary legislation

The requirement that contamination must be present as a result of industrial activity does not apply to radon.

Radon is a naturally occurring colourless and odourless gas that is chemically inert, but dangerous because it gives off alpha rays, which are particularly damaging if the gas is inhaled. Although often associated with the West Country, it is also found in other parts of the UK, such as Northamptonshire and Aberdeenshire.

In some areas the underlying geology means that the level of radon is high enough to pose a potential risk to health, and remedial action needs to be taken.

HMRC accepts that the test for harm is satisfied where the level of radon exceeds the Health Protection Agency Action Level (as applying at the time of the work being carried out). The Health Protection Agency is a UK-wide non-departmental public body dedicated to protecting people's health.

At the time of writing the Action Levels are 400 becquerels per cubic metre for workplaces and 200 becquerels per cubic metre for domestic properties.

Examples of how work on minimising the threat from radon qualifies for Land Remediation Relief can be found in CIRD61425.

For guidance on other gases present in the ground see CIRD61540

CIRD61425 Radon: Examples

This section looks at examples of how work on minimising the threat from radon qualifies for Land Remediation Relief. This should be read together with the guidance at CIRD61420.

Example:

A developer is building a housing estate. As the levels of radon are above the Action Level for domestic premises, the developer decides to install a continuous membrane to act as a barrier to radon.

Land Remediation Relief is available on the costs of installing the membrane (including the cost of the membrane).

Example:

A Ltd identifies a market for new office space and decides to build an office building. As part of the development, it carries out tests for radon. These show that the level will be above the Action Level for workplaces and the company decides to install a radon sump with extractor fan to

control the level of radon in the building. As planned the company sell the building on completion.

The company can claim Land Remediation Relief on the installation of the radon sump.

In this example, A Ltd incurred revenue expenditure. Had the company built the property with the intention of letting the office space, then this would have been capital expenditure. In this situation A Ltd has to consider whether any of the expenditure qualified for capital allowances.

To take another look at the example above:

A Ltd identifies a market for new office space and decides to build an office building. As part of the development, it carries out tests for radon. These show that the level will be above the Action Level for workplaces and the company decides to install a radon sump with extractor fan to control the level of radon in the building. A Ltd then lets the office space as part of its UK property business.

The radon sump with extractor fan is a form of powered system of ventilation qualifying for capital allowances as an integral feature (CAA01/S33A). As the expenditure qualifies for capital allowances, A Ltd cannot claim Land Remediation Relief (see CIRD60065).

For guidance on other gases present in the ground see CIRD61540

CIRD61430 Japanese Knotweed: Expenditure from 1 April 2009

CTA09/S1145 (3) & Secondary legislation

Japanese knotweed (*Fallopia japonica*) was introduced to the UK in Victorian times as an ornamental garden plant. It was also planted to stabilize embankments along railways and canals.

Under secondary legislation, expenditure on removing Japanese knotweed is qualifying land remediation expenditure.

Neither the exclusion of living organisms (CIRD61400) nor the exclusion of contamination caused other than by industrial activity (CIRD61250) apply to Japanese knotweed.

This section contains the following guidance:

CIRD61435	Japanese knotweed – Fly-tipping & natural spread
CIRD61440	Japanese knotweed – allowing it to spread
CIRD61445	Japanese knotweed – allowing it to spread: Examples
CIRD61450	Japanese knotweed – Qualifying methods

CIRD61435 Japanese knotweed – Fly-tipping & natural spread

One way that Japanese knotweed has spread has been by regeneration from small pieces of rhizome that have been introduced by fly-tipping.

As a result an infestation of Japanese knotweed can occur during a period of ownership through no fault of the landowner or occupier and with no realistic hope of redress against the polluter.

To reflect this position, the requirement that the land has to be acquired in a contaminated state does not apply to Japanese knotweed.

Although there is no requirement that the land was infested with Japanese knotweed at the time of acquisition, the polluter pays principle still applies. A company that was responsible for planting Japanese knotweed does not qualify for Land Remediation Relief on expenditure for subsequently removing the weed.

For further information on how the polluter pays principle applies to Japanese knotweed see CIRD61440.

Example

A Ltd purchased a plot of land that had previously been used for residential properties. At that time there was no Japanese knotweed on

the site. Subsequently it was found that Japanese knotweed had spread onto the site probably as a result of fly-tipping.

Once they became aware of the presence of Japanese knotweed, A Ltd spent £10,000 on removing it, using an off-site treatment centre.

As the requirement that the land must be contaminated at acquisition does not apply to Japanese knotweed, A Ltd can claim Land Remediation Relief. A Ltd is not the polluter, as it acted promptly once it became aware of the problem.

CIRD61440 Japanese knotweed – allowing it to spread

The polluter pays principle applies to the removal of Japanese knotweed.

This means that:

- A company that was responsible for planting Japanese knotweed does not qualify for Land Remediation Relief on expenditure for subsequently removing the weed.
- A company that finds it has Japanese knotweed on its property and takes no action thus allowing the infestation to spread so that the area infested is significantly larger by the time that they take action may be debarred from relief under the polluter pays principle.

The question of whether an infestation has spread so much that relief is not available will depend upon the facts of the individual case. HMRC will allow relief in cases where the company takes remedial action as soon as practically possible after discovering the infestation.

HMRC accept that a company is taking remedial action if it takes appropriate specialist advice, and acts in accordance with that advice.

Some treatments for Japanese knotweed need to be applied during the growing season. If the company was advised to wait for the next growing season before commencing treatment then HMRC accept that they have acted within a reasonable time, if they commence treatment the following year.

For examples of how HMRC will approach this issue, see CIRD61445

CIRD61445 Japanese knotweed – allowing it to spread: Examples

This sections sets out examples of how HMRC approach the question of applying the polluter pays principle to Japanese knotweed.

Example:

B Ltd purchased a plot of land that had previously been used for residential properties. At that time there was no Japanese knotweed on the site. Subsequently it was found that Japanese knotweed had spread onto the site probably as a result of fly-tipping. B Ltd takes no action at that time as there has been a downturn in the housing market. The infestation of Japanese knotweed spreads so that by the time the market changes and B Ltd takes action to remove the Japanese knotweed; it covers much of the site.

B Ltd is unable to claim Land Remediation Relief as the Japanese knotweed spread considerably due to the failure of B Ltd to take action within a reasonable time.

Example:

A visitor to D Ltd identifies Japanese knotweed growing around the car-park. There is no indication of how long it has been there, but D Ltd did not plant it.

As a result of the visitor's comments, D Ltd carry out research and contact a specialist removal firm, who advise that D Ltd should wait until the following growing season before commencing a chemical treatment.

The following year, D Ltd engages the specialist firm to treat the infestation. The treatment is spread over several years.

D Ltd can claim Land Remediation Relief. Although the Japanese knotweed had been growing for some time, D Ltd acted quickly, and in accordance with specialist advice, once it was identified.

CIRD61450 Japanese Knotweed – Qualifying methods

There are various methods of dealing with Japanese knotweed.

From 1 April 2009 methods of dealing with Japanese knotweed that involve the removal of material to a landfill site are excluded from the relief.

Methods of dealing with Japanese knotweed that are applied in situ or at off-site treatment centres continue to qualify for the relief.

Example

Company A purchased a plot of land that had previously been used for residential properties. There was an infestation of Japanese knotweed. Company A has the opportunity of a quick sale, so spends £10,000 on the removal of the Japanese knotweed to a landfill site.

As expenditure on removing Japanese knotweed to landfill sites has been excluded from the relief. Company A cannot claim Land Remediation Relief.

Example

Company B purchases a plot of land for re-development. When work is about to begin, they find that there is an infestation of Japanese knotweed due to fly-tipping. Company B spends £10,000 on having the soil that may contain Japanese knotweed treated at an off-site treatment centre, before being returned to the site and used for landscaping.

Although material is removed from the site for treatment, this is only a temporary removal. The method does not involve the use of landfill and Company B can therefore claim Land Remediation Relief.

CIRD61500 Relevant Contaminated Land Remediation

CTA/S1146

Relevant contaminated land remediation involves:

- preventing or minimising, or remedying or mitigating the effects of, any relevant harm, by reason of which the land is in a contaminated state,

The legislation allows for expenditure on specific methods of land remediation to be excluded by Treasury Order. This may be done where alternative methods are seen as environmentally preferable. At present these powers have been used to exclude the removal of Japanese knotweed to Landfill.

Any method of dealing with the contamination that is not specifically excluded, may qualify for Land Remediation Relief, provided that the other tests are met.

The question of what is the appropriate method of dealing with the contamination is entirely a matter for the company, local planning authorities or appropriate regulatory body. It is not for HMRC to second guess the appropriateness of a particular method in a particular case.

Relevant contaminated land remediation is not restricted to those activities needed to restore the land to a state in which planning permission can be obtained. If, for commercial reasons, a company chooses to restore the land to a higher standard then the relevant contaminated land remediation includes those activities whose purpose is to restore the land to that higher standard.

This section contains the following further guidance:

CIRD61501	Preventing, minimising, remedying or mitigating
CIRD61505	Methods of remediation: Cover systems
CIRD61510	Methods of remediation: In ground barriers and cut-off walls
CIRD61515	Methods of remediation: dig and dump
CIRD61520	Methods of remediation: Biological treatment
CIRD61525	Methods of remediation: Cement based stabilisation
CIRD61530	Methods of remediation: Different grades of cement
CIRD61535	Foundations

CIRD61501 Preventing, minimising, remedying or mitigating:

CTA/S1146

There is a very wide range of measures that are used to address the problem of contaminated land. This section sets out some of the types of work that can attract Land Remediation Relief.

There are a very wide range of measures that are used to address the problems of land affected by contamination. In re-developing land in a contaminated state, **options appraisal** is the second part of the overall process of risk management and follows on from the risk assessment. There are three main stages of option appraisal:

1. Identifying feasible remediation options for each combination of contaminants, pathways and receptors (who or what is affected)
2. Carrying out a detailed evaluation of feasible remedial options to identify the most appropriate options
3. Producing a remedial strategy that addresses all relevant sources, pathways and receptors, where appropriate by combining remediation options.

This section does not promote any one option for land remediation. Land Remediation Relief will be considered for all options where an appropriate options appraisal has been carried out to mitigate the risk from contaminant(s) that have resulted in land that is in a contaminated state.

This section sets out some of the types of work that can qualify for Land Remediation Relief. It must be noted that this list is not exhaustive and that there are many other methods that will qualify for relief.

CIRD61505 Methods of remediation: Cover systems

Cover systems involve placing a layer of material over the contaminated ground in order to either provide a barrier between the contamination and site-users or to prevent the infiltration of rain and drainage water into the ground to protect controlled waters. Cover systems do not remove the contamination, but do prevent or mitigate the effect of the contamination.

Example:

A Ltd are developing a housing estate. A Ltd carries out a risk assessment in accordance with good practice and find that on part of the site, the level of metal contamination is considered to pose an unacceptable risk. A Ltd installs a cover system to prevent future residents from coming into contact with the contaminated ground. As a

result the exposure pathway between the source of contamination and the people living there is broken and there is no risk of the people being affected, for example as a result of eating home grown vegetables.

A Ltd can claim Land Remediation Relief on the cost of installing the cover system. The land was contaminated for the purposes of Land Remediation Relief, as the level of contamination exceeded relevant Soil Guideline Values for that type of housing development. And the cover system that A Ltd installed to minimise the “serious possibility of relevant harm” is not excluded by Treasury Order.

CIRD61510 Methods of remediation: In-ground barriers and cut-off walls

This technique does not remove the contamination and instead it contains the contamination by building a barrier around it. The barriers may be built of sheet piles, geo-membranes or a cement based slurry.

The nature of a barrier, such as cement based slurry, can be varied according to the nature of the contamination present.

Example:

A Ltd are developing a housing estate. There is contamination on part of the site. To prevent contamination of a nearby water course, A Ltd installs a barrier to prevent the contamination leaching from the soil into the stream

A Ltd can claim Land Remediation Relief as it is preventing the “serious possibility of relevant harm” by containing the contamination and preventing significant pollution of controlled waters.

CIRD61515 Methods of remediation: Dig and dump:

“Dig and dump” is the term used to describe the excavation of contaminated material and its removal to landfill. Whilst more environmentally friendly alternatives to dig and dump are being promoted, the removal of contaminated material by this method continues to qualify except where it has been excluded by Treasury Order (see CIRD61400)

Example:

Company A acquire a site for re-development. Waste by-products containing asbestos were buried on the site and Company A conclude that the only option is to dig the waste up and dispose of it in landfill.

Company A can claim Land Remediation Relief as the dig and dump of material containing asbestos has not been excluded. Company A cannot claim Land Remediation Relief on the payments of Landfill Tax (see CIRD63110) as these are specifically excluded from the relief. As a

developer, Company A will be able to claim the payments of Landfill Tax under the normal rules for computing its trading profits.

CIRD61520 Methods of remediation: Biological treatment

Biological treatment can take place in situ or the material can be excavated and treated on site or taken to an off-site treatment centre, with the treated material being returned to the site. Treatment can involve stimulating the naturally occurring microbial communities or the introduction of other microbes to break down the contaminants.

Example:

Company A acquire a redundant petrol station from an unconnected party, where there has been contamination by leaking fuel. They use an off-site biological treatment to remove the contamination before replacing the soil.

Company A can claim Land Remediation Relief as the treatment has remedied the problem by removing the contamination. Qualifying expenditure includes the cost of returning the soil to the site.

CIRD61525 Methods of remediation: Cement based stabilisation

This method is also referred to as stabilisation/solidification. It is used for a wide range of contamination, including metals, resin, tar and PCBs.

A cement based material is used to chemically stabilise and also contain the contaminants in situ. The contamination is effectively sealed within a block in the ground.

Expenditure on cement based stabilisation can qualify for Land Remediation Relief as it is preventing the potential relevant harm by containing the contamination.

CIRD61530 Methods of remediation Different grades of Cement:

CTA09/S1146 (3)

This guidance applies to expenditure incurred on or after 1 April 2009

Some contaminants, such as iron sulphates, present in the soil can corrode cement. As a result it may be necessary to use a different quality of cement due to the presence of such contaminants in the soil.

Land Remediation Relief is not available where the contamination comes from natural sources, such as decay of the underlying rock strata. Such contamination is not included in the list of exceptions at CIR D61400.

The purpose of the higher grade of cement is to prevent or mitigate the possibility of relevant harm. As a result, where the contamination is the result of industrial activity, Land Remediation Relief will be available for the additional cost (see CIR D63100) arising from having to use a higher grade of cement or concrete because of the risk of relevant harm to the building or structure.

HMRC accept that the “relevant harm” test is satisfied where a higher grade of concrete or cement is required to comply with the appropriate British Standard.

Up to 1st December 2003, this was BS 5328. From that date it is BS 8500: Concrete - Complementary British Standard to BS EN 206-1.

Example:

X Ltd acquires a site for re-development. The desk study shows that the site had been previously used as a parking lot by a transport company. Further work shows that the site has high levels of sulphate. The underlying rock is not rich in sulphate and the contamination is traced to the rubble used to create a hard standing for the lorries, which includes sulphate rich blast furnace slag. X Ltd uses higher grade cement in line with the British Standard.

X Ltd can claim Land Remediation Relief on the **additional** cost of using the higher grade cement as the sulphate contamination is from industrial activity and X Ltd has acted in accordance with the British Standard applicable at the time.

CIR D61535 Foundations

During the course of remediation the land may be disturbed. A subsequent development may need more substantial foundations because the land has been disturbed.

The cost of the more substantial foundations **does not** qualify for Land Remediation Relief as the expenditure does not prevent, minimise, remediate or mitigate the contamination. This has already taken place. And the disturbed state of the ground arises from the actions of the claimant.

CIR D61540 Ground Gases

A number of gases may be present in the ground pose a potential problem for buildings and their occupants. These gases may be referred to as ground gas or soil gas.

For treatment expenditure to qualify for relief, the ground gas must be present as a result of industrial activity. Gases, other than radon, present as a result of natural processes or as a result of the decay of living organisms, do not qualify for relief.

Expenditure on treating methane, carbon dioxide and hydrogen sulphide present as a result of peat bogs, river or lake sediments or originating in the underlying limestone or chalk does not qualify for Land Remediation Relief. These are natural contaminants not in the list of exceptions at CIR D61400.

The types of expenditure that may qualify for relief include the costs of installing barriers, such as gas resistant membranes and underfloor venting.

For guidance on radon see CIR D61420

CIRD62000 Derelict Land

For expenditure incurred on or after 1 April 2009, Land Remediation Relief is available for specified expenditure on bringing derelict land back into productive use.

Land Remediation Relief is not available where, under the legislation on pre-trading expenditure, expenditure actually incurred before 1 April 2009 is deemed to have been incurred on or after 1 April 2009.

An outline of the scheme can be found at CIRD60020

This section contains the following guidance:

CIRD62001	What is derelict land?
CIRD62005	What is long term derelict land?
CIRD62010	Land must be derelict at acquisition
CIRD62015	English National Land Use Database
CIRD62020	Scottish Vacant and Derelict Land Survey
CIRD62025	Evidence for dereliction
CIRD62030	Qualifying works

CIRD62001: What is derelict land?

CTA09/S1145A

Land is defined as being derelict for the purposes of Land Remediation Relief if it is:

- not in a **productive state**; and
- cannot be put into a productive state without the removal of buildings or other structures

The term “productive state” has a wide meaning. It includes land that is in economic use, for example as retail premises or a car park, and land that has a social use, as housing or a recreational area.

In addition the presence of buildings or structures on the site must be preventing the site being brought back into productive use.

Example – land in a productive use

The site of a former warehouse has been in use for a number of years as a car park. Company A purchase the site for re-development as offices. To enable this to be done, the foundations and services relating to the former warehouse need to be removed.

Land Remediation Relief is not available as the site was in productive use as a car park.

Example – land in a productive use

An area of waste land adjoining a railway yard is designated as a Site of Special Scientific Interest.

Land Remediation Relief is not available as the land is socially productive.

Example – unused for other reasons

An extensive riverside site has been unused for a number of years. Before it can be brought back into use, the flood defences have to be modernised.

The land is not derelict for the purposes of Land Remediation Relief as it can be brought back into productive use without the removal of buildings or other structures.

CIRD62005: What is long term derelict land?

CTA09/S1149 (3)

To qualify as derelict land for the purposes of the relief, land has to have been derelict since 1 April 1998.

Powers to amend:

The qualifying date can be amended by Treasury Order. This allows the Government to review the qualifying date – as and when necessary – in light of the amount and location of additional land that would qualify for the relief as a result of the change.

CIRD62010: Land must be derelict at acquisition:

CTA09/S1149 (3)

A company that allows a property to become derelict cannot claim Land Remediation Relief for expenditure incurred in bringing it back into productive use.

The land must have been derelict when it was first acquired by that company or a connected party.

CIRD62015: English National Land Use Database

The National Land Use Database (NLUD) classifies land use in England.

Paragraph 11.2 of the NLUD defines derelict land as:

- land so damaged by previous industrial or other development that it is incapable of beneficial use without treatment, where treatment includes any of the following: demolition, clearing of fixed structures or foundations and levelling.
- abandoned and unoccupied buildings in an advanced state of disrepair i.e. with unsound roof(s).

It excludes

- land damaged by development which has been or is being restored for agriculture, forestry, woodland or other open countryside use.
- land damaged by a previous development where the remains of any structure or activity have blended into the landscape in the process of time (to the extent that it can reasonably be considered as part of the natural surroundings), and where there is a clear reason that could outweigh the re-use of the site - such as its contribution to nature conservation - or it has subsequently been put to an amenity use and cannot be regarded as requiring redevelopment.

HMRC accept that the fact that land was classified on the NLUD as meeting this definition was evidence that the land was derelict for the purposes of Land Remediation Relief at that time.

Example:

Company A purchased previously developed land. It was classified as vacant land (as defined at paragraph 11.1) from 1998 to 2003, at which point it was re-classified as derelict land (as defined at paragraph 11.2).

Land Remediation Relief for derelict land is not available as the land was not derelict at 1 April 1998.

Land in England does not need to be on the NLUD to qualify. For the guidance on evidence where the land is not on a land use database see CIR62025

CIR62020: Scottish Vacant and Derelict Land Survey

The Scottish Vacant and Derelict Land Survey is a survey undertaken to establish the extent and state of vacant and derelict land in Scotland.

Scottish Vacant & Derelict Land Survey states that land is derelict if it is:

- so damaged by development or use that it is incapable of development for beneficial use without rehabilitation and
- not currently used for a purpose allocated in an adopted local plan or council approved replacement plan.

Also for the purposes of the survey, derelict land or a derelict building includes:

- land (or a building) which is not being used and has a previous un-remediated use which could constrain future development (even if treatment is required only for the buildings thereon).

There are a number of exclusions from the definition.

HMRC accept that the fact that land is classified on the Scottish Vacant and Derelict Land Survey as meeting this definition is evidence that the land was derelict for the purposes of Land Remediation Relief at that time.

Land in Scotland does not need to be on the Scottish Vacant and Derelict Land Survey to qualify. For the guidance on evidence where the land is not on a land use database see CIR62025

CIR62025: Evidence for dereliction

CTA09/S1145A

This section looks at the evidence needed to show whether a site was derelict at a particular time.

Derelict at acquisition:

The best evidence for the state of the building is a survey carried out at acquisition.

Other evidence would include the estate agent's literature about the property.

Derelict since 1998:

There are a wide variety of sources of data that may show the history of a site

Insurance company data – was it insured other than as a derelict site?

Empty Property Business Rates – If business rates were being paid then that is a pointer to the site not being derelict.

Evidence would include the estate agent's literature about the property. The estate agent may also be able to provide information as to when they were instructed and the state of the building at that time.

CIR62030: Qualifying Works

CTA09/S1146A & secondary legislation

To qualify for relief, the expenditure must be on relevant preparatory work (see CIR63215) or on works set out in secondary legislation.

The current list of types of work on derelict land that qualify for relief are:

- **Removal of post tensioned concrete heavyweight construction**
- **Removal of building foundations and machinery bases;**
- **Removal of reinforced concrete pilecaps**
- **Removal of reinforced concrete basements**
- **Below ground removal of redundant services;**

These works are specific; other, seemingly closely related, types of work do not attract relief 'by analogy'.

Post tensioning is usually employed where stressing is to be carried out on site after casting an in-situ component, or where a series of pre-cast concrete units are to be cast together to form the required member.

Piles are long slender columns composed of solidified concrete grout constructed in the ground to carry a vertical load. Pilecaps are concrete structures, normally square or rectangular, of a thickness which combine piles in groups. The pilecap transmits the load from the structure to the piles.

The removal of reinforced concrete basements can require significant and expensive stability works such as underpinning and propping.

Underground services are restricted to those relating to gas supply, water supply (including drainage and sewerage), electricity supply and telecommunications services. Other items do not qualify.

What constitutes an underground service is widely drawn and covers any pipes, wiring, cables, tunnels or similar equipment or infrastructure.

CIRD63000 Qualifying Land Remediation Expenditure

FA01/Sch22/Para2
CTA09/S1144

Land Remediation Relief gives an enhanced deduction on Qualifying Land Remediation Expenditure incurred in an accounting period.

Qualifying Land Remediation Expenditure includes both revenue expenditure and also any capital expenditure where the company has made an election to treat it as a deduction in arriving at the profits (see CIRD60055)

Some expenditure is specifically excluded

CIRD63005	Qualifying land remediation expenditure to 31 March 2009
CIRD63050	Qualifying land remediation expenditure from 1 April 2009
CIRD63100	Expenditure incurred because of contamination or dereliction

CIRD63005 Qualifying Land Remediation Expenditure – 31 March 2009 and earlier

FA01/Sch22/Para2

Qualifying land remediation expenditure means expenditure that meets the following five conditions, namely that the expenditure:

- is incurred on land all or part of which is in a contaminated state,
- is incurred on relevant land remediation directly undertaken by the company or on its behalf,
- is incurred on employee costs and materials, or is qualifying expenditure on sub-contracted land remediation
- would not have been incurred had the land not been in a contaminated state,
- is not subsidised

For further information see:

CIRD69005	Employee costs
CIRD63225	Professional fees
CIRD63230	subcontractors
CIRD63130	Subsidised expenditure

CIRD63050 Qualifying Land Remediation Relief - from 1 April 2009

CTA09/S1144

Qualifying land remediation expenditure means expenditure on land in the UK acquired by a company for the purposes of a trade or property business carried on by the company that satisfies the following conditions:

- The expenditure is incurred on land all or part of which is in a contaminated or a derelict state.
- The expenditure would not have been incurred if the land had not been in a contaminated or derelict state.
- The expenditure is:
 - (a) in the case of land in a contaminated state, expenditure on relevant contaminated land remediation undertaken by the company, or
 - (b) in the case of land in a derelict state, expenditure on relevant derelict land remediation so undertaken.
- The expenditure is:
 - (a) incurred on staffing costs,
 - (b) incurred on materials,
 - (c) incurred in respect of relevant land remediation contracted out by the company to another person with whom the company is not connected, or
 - (d) qualifying expenditure on connected sub-contracted land remediation.
- The expenditure is not subsidised.
- The expenditure is not incurred on landfill tax.

For further guidance see:

CIRD63225	Professional fees
CIRD69025	Staffing Costs
CIRD63230	subcontractors
CIRD63130	Subsidised expenditure

CIRD63100 Expenditure incurred because of contamination or dereliction

FA01/SCH22/PARA7

CTA09/S1144 & CTA09/S1173

Land Remediation Relief is only available for expenditure that would not have been incurred had the land not been in a contaminated or derelict state.

The condition that expenditure would not have been incurred had the land not been in a contaminated state is considered to be satisfied:

- to the extent that expenditure on the land is increased and the only reason for that increase is because the land is in a contaminated or derelict state, or
- if the main reason that any works are done, operations are carried out or steps are taken is for the purpose of relevant land remediation.

Example:

A Ltd purchases land that has been contaminated with oil that had leaked from tanks.

A Ltd engaged the services of a sub-contractor, B Ltd.

B Ltd excavated the soil, took it away and subjected it to a process of bioremediation. At the end of the process B Ltd replaced the soil.

A Ltd removed and filled in the tanks.

The payment made by A Ltd to B Ltd qualifies as the whole of the work carried out by B Ltd was for the purpose of relevant land remediation. The work would not have been done but for the fact that the soil was contaminated.

A Ltd cannot claim Land Remediation Relief on the cost of removing the tank and infilling as this is not a cost of removing the contamination and would have to be done whether or not the site was contaminated.

Example:

C Ltd is re-developing a brown-field site as a residential estate. There are contaminants in the soil and C Ltd installs a membrane to prevent the contaminants migrating to the surface. C Ltd also imports top-soil and sub-soil for the gardens.

The cost of the top-soil and sub-soil does not qualify for Land Remediation Relief as C Ltd would have imported the soil, to improve the amenity value and provide a growing medium for garden plants and vegetables, whether or not the site was contaminated. The cost of the membrane (or other break-layer) installed beneath the soil qualifies for Land Remediation Relief as it is only installed for the purpose of preventing harm that might otherwise ensue.

This section contains the following guidance on types of additional costs that are incurred as a result of the land being contaminated or derelict:

CIRD63105	Excluded expenditure
CIRD63200	Additional costs of clearing asbestos
CIRD63205	Fencing and security
CIRD63210	Landfill – additional costs
CIRD63215	Preparatory Activity
CIRD63225	Professional fees
CIRD63230	Subcontractors
CIRD63265	Verification

CIRD63105 Excluded expenditure

This section sets out the types of expenditure that are excluded from being qualifying land remediation expenditure.

This section contains the following guidance:

CIRD63110	Landfill Tax
CIRD63120	Statutory Obligations
CIRD63130	Subsidised expenditure
CIRD63135	Subsidised expenditure - compensation
CIRD63140	Subsidised expenditure - Contractors
CIRD61350	Work Carried out by local authorities

CIRD63110 Landfill Tax

CTA09/S1144 (6A)

This guidance applies for expenditure incurred on or after 1 April 2009.

If, in the course of clearing a derelict or contaminated site, material is taken to a landfill site, the payments of Landfill Tax are not qualifying expenditure for the purposes of Land Remediation Relief.

This means that:

- an election to treat capital expenditure as a deduction cannot be made in respect of a payment of Landfill Tax
- a claim for an enhanced deduction cannot be made in respect of a payment of Landfill Tax.

This does not affect whether or not a payment of Landfill Tax is an allowable expense for the purposes of calculating the profits (or losses) from a trade or property business.

The charge levied by the site operator does qualify for Land Remediation Relief.

Example:

D Ltd purchases and renovates an office block. It disposes of asbestos waste at a landfill site.

D Ltd can claim Land Remediation Relief on the cost of transporting the asbestos to the appropriate Landfill site, and the charge levied by the site operator. It is only the payment of Landfill Tax that does not qualify for Land Remediation Relief.

CIRD63120 Statutory obligations:

CTA09/S1146 (3A)(b)

Expenditure incurred on or before 31 March 2009

For periods up to, and including 31 March 2009, there are no restrictions on relief for work carried out under a statutory obligation

Expenditure incurred on or after 1 April 2009:

Where work is carried out under a statutory obligation imposed by legislation listed in a Treasury Order, then that expenditure on that work does not qualify for Land Remediation Relief

Work carried out under a statutory obligation other than one listed in a Treasury order will still qualify for relief if all other conditions are satisfied.

Where the obligation only arises once a notice has been issued, then the exclusion will only apply where a notice has actually been served. Expenditure on any work carried out that could have been the subject of a notice, but which was carried out before a notice has been issued, will still qualify for the relief, subject to meeting the other conditions.

The legislation on issues such as planning varies across the UK. Expenditure on work carried out under equivalent obligations imposed anywhere in England, Scotland, Wales or Northern Ireland is excluded from the scope of Land Remediation Relief.

The list of types of work currently excluded from the scope of the relief includes:

Expenditure required on land/buildings adversely affecting the amenity of neighbourhood. This includes work under

- section 215 of the Town and Country Planning Act 1990
- section 179 of the Town and Country Planning (Scotland) Act 1997
- paragraph 39, Planning (Northern Ireland) Order 1991

Expenditure incurred on work required on defective premises, dangerous buildings, ruinous and dilapidated buildings and neglected sites. This includes work carried out under:

- sections 76 – 79 of the Building Act 1984
- section 66 Pollution Control and Local Government (Northern Ireland) Order 1978 (No. 1049 (N.I. 19))
- section 28 Building (Scotland) Act 2003

Expenditure on work required for the abatement or prohibition of a nuisance. This includes work carried out under:

- sections 79-82 of the Environment Protection Act 1990 for (England Scotland & Wales); and
- section 65 Pollution Control and Local Government (Northern Ireland) Order 1978 (No. 1049 (N.I. 19))

Expenditure on work on a listed building under a repairs notice. This includes work carried out under:

- section 43 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
- section 48 Planning (Listed Buildings and Conservation Areas) Act 1990
- article 109, Planning (NI) Order 1991

The list of types of work carried out under a statutory obligation that are excluded from the relief can be amended by Treasury Order.

CIRD63130 Subsidised Expenditure

FA01/SCH22/PARA8
CTA09/S1177

To the extent that expenditure is covered by a grant or subsidy, it does not qualify for relief.

This exclusion covers all expenditure met, directly or indirectly, by anyone other than the company (or subcontractor), as well as expenditure met by grants and subsidies.

Where the grant, subsidy or payment is not allocated to particular expenditure of the company (or subcontractor), it is to be allocated in a just and reasonable manner.

Example

Company A acquires contaminated land, as a fixed capital asset of its trade, from Company C at an agreed acquisition cost of £1 million. The agreement also contains a condition that Company C will meet up to £100,000 of Company A's land remediation costs. Company A engages the services of an unconnected subcontractor to remediate the contaminated land at a cost of £150,000.

Company A's qualifying land remediation expenditure is £50,000. The additional £100,000 is subsidised by Company C. Company A can elect for £50,000 to be an allowable deduction in computing its trading profit (or loss) and claim additional Land Remediation Relief of £25,000 in its computation of its trading profit (or loss).

Example

Company B acquires contaminated land from Company D, as a fixed capital asset of its trade, at an agreed acquisition cost of £900,000. Company B engages the services of an unconnected sub-contractor to remediate the contaminated land at a cost of £150,000.

Company B's qualifying land remediation expenditure is £150,000 and it can elect for that amount to be an allowable deduction in computing its trading profit (or loss) and claim additional Land Remediation Relief of £75,000 in its computation of trading profit (or loss).

CIRD63135 Subsidised expenditure – Compensation

FA01/SCH22/PARA8
CTA09/S1177

Land Remediation Relief is not available where the cost of removing the contamination is covered by compensation received from a third party.

Example

Company A acquires a plot of land for development. It discovers that the site has been contaminated by chemicals being carried onto the site from an adjoining factory owned by Company B, an unconnected party.

Company A spends £150,000 on cleaning up the contamination and installing a barrier to prevent further contamination.

Company A seeks compensation from Company B. After negotiations Company B agrees to settle the claim in full.

Company A cannot claim Land Remediation Relief as all the expenditure has been met by Company B.

Example

Company A is considering acquiring a plot of land for development. It engages the services of Surveyor B, who advises that there is no contamination on the site.

On commencing work, Company A discover that waste containing asbestos has been buried on the site and spends £100,000 on removing the asbestos.

Company A seeks compensation from Surveyor B. After negotiations Company A accepts an offer in settlement of £50,000.

Company A can only claim Land Remediation Relief on £50,000 as the other £50,000 has been met by Surveyor B.

CIRD63140 Subsidised expenditure – Contractors

FA01/SCH22/PARA8

It is the principal, not the contractor, who may be entitled to Land Remediation Relief.

The term “subsidised expenditure” covers subsidies provided both directly and indirectly.

As the costs are ultimately incurred by the principal, the contractor cannot claim relief. This includes an operator engaged in a Private Finance Initiative project who is providing design and construction services rather than constructing a capital asset for their business. For further information on the capital or revenue position for companies engaged in Private Finance Initiative projects see the Business Income Manual at BIM64000.

CIRD63150 Work carried out by local authorities:

Local authorities have a number of powers that enable them to enter a site and carry out work. They can then seek to recover their costs from owners/occupiers.

For expenditure incurred on or before 31 March 2009

FA01/Sch22/Para2 (3)

Where a company makes a payment to a local authority to cover these costs, this payment may qualify for Land Remediation Relief, if the statutory powers mean that the local authority is carrying out the work on behalf of the company.

For expenditure incurred on or after 1 April 2009

CTA09/S1144

Where a company makes a payment to a local authority to cover these costs, this payment does not qualify for Land Remediation Relief. This is because the company did not carry out the work itself nor did it sub-contract the work to the local authority which was acting under its statutory powers.

CIRD63200 Additional costs of clearing Asbestos:

There is legislation in The Control of Asbestos Regulations 2006 and The Control of Asbestos Regulations (Northern Ireland) 2007 governing the way that asbestos is removed.

As a result additional costs may be incurred in containing the asbestos and dust from the asbestos during removal.

For example, a licensed contractor must be employed to remove high risk material, such as pipe insulation or asbestos insulating panels.

The additional costs incurred in order to comply with the regulations are part of the cost of removing the asbestos and so may qualify for Land Remediation Relief.

CIRD63205 Fencing & security

The costs of fencing around a site and security for the site only qualify for Land Remediation Relief where they would not have been incurred but for the land being contaminated, see CIRD63100.

For example if a higher standard of security fencing has to be installed whilst decontamination takes place then the **additional** cost of that higher standard of fencing may qualify for Land Remediation Relief.

CIRD63210 Landfill – additional costs

FA01/SCH22/PARA7

CTA09/S1144 & CTA09/S1173

Land Remediation Relief is only available for expenditure that would not have been incurred had the land not been in a contaminated state.

Where the material would have been disposed of to landfill, but because it is contaminated material, it has to be taken to a different site that has the facilities to accept that waste, then the additional costs are the difference between the charges levied by the ordinary site and the site accepting contaminated waste, and the **additional** cost of transporting the material to the other site.

Example:

A Ltd is re-developing a building. As part of the renovations, it removes asbestos panelling. The local landfill site will not accept this material and it has to be taken to a more expensive site 100 miles away.

A Ltd can claim Land Remediation Relief on the higher cost of transporting the asbestos in special containers to the more distant site. It can also claim on

the difference between the charges levied on the local site and the higher charges levied by the specialist site.

CIRD63215 Preparatory Activity

FA01/SCH22/PARA4 (5)

CTA09/S1146 (4) & CTA1146A (5)

Qualifying Land Remediation Expenditure includes the cost of preparatory work provided that the company goes on to carry out the remediation.

Preparatory activities are not Qualifying Land Remediation Expenditure if the company does not go on to carry out relevant land remediation. This means that the enhanced deduction under Land Remediation Relief is not available. The cost of the preparatory work may be a deduction under the normal rules of computing the profits, see BIM35325.

Land in a contaminated state

The type of preparatory work that qualifies is work to ascertain the level of contamination in the:

- site itself,
- controlled waters (see CIRD69001) affected by that land; or
- any land adjoining the site

The cost of an initial desk study (see CIRD61260) does not qualify for relief as this cost would have been incurred anyway as part of the planning process. If, as a result of the desk study, it is thought that there is contamination of the site, then the costs of further work to establish the level of contamination together with the cost of the risk assessment would be qualifying preparatory work.

For expenditure incurred on or before 31 March 2009

The controlled waters affected by the land are those where pollution is being caused, or is likely to be caused, because the land is in a contaminated state.

For expenditure incurred on or after 1 April 2009

The controlled waters affected by the land are those where significant pollution is being caused, or there is a serious possibility of pollution being caused, because the land is in a contaminated state.

Derelict Land

Relevant preparatory work includes work to establish the nature and condition of the structures on the site expenditure on the removal of which may qualify for Land Remediation Relief for derelict land.

For examples of how HMRC approach this issue see CIRD63220

CIRD63220 Preparatory Activity: examples

This section sets out how HMRC will approach the question of what are preparatory activities for the purposes of Land Remediation Relief. You should read the guidance on preparatory activities in CIR63215 before considering the examples.

Example:

A Ltd purchases a site for redevelopment as residential properties. It carries out a desk study to identify potential hazards and follows this up by carrying out further work to establish the levels of contamination. As the level of contamination exceeds the soil guideline value for residential property A Ltd carries out remedial work.

In addition A Ltd carries out tests for radon, which is found to exceed the Health Protection Agency guidelines for residential properties and steps are taken to mitigate the problem.

A Ltd can claim as qualifying land remediation expenditure the preparatory costs of the further tests to establish the level of contamination and the costs of the tests to establish the level of radon.

A Ltd cannot claim the cost of the desk study as this would have been carried out as part of the planning process whether or not the site was contaminated.

Example:

B Ltd purchases a site that has been derelict for many years, for redevelopment as residential properties. It carries out survey work to establish the extent and condition of the redundant services and the foundations of the previous buildings. These are then removed so that the development can take place.

B Ltd can claim the cost of evaluating the structures as qualifying land remediation expenditure.

Example:

Initial tests indicate that C Ltd will need to take measures to address heavy metal contamination before it can build residential properties on its site. Before carrying out the work, C Ltd becomes aware of a new test, which measures more accurately the bio availability of the contaminant, which is the amount of the contamination that actually poses a danger to health. C Ltd has its site tested and the results show that there is only a low risk of the contamination being taken up and no remedial work is needed.

C Ltd did not carry out any qualifying land remediation so whilst relief is available for the cost of the preliminary work under the normal rules for calculating the trading profit, the enhanced deduction under Land Remediation Relief is not available.

CIRD63225 Professional Fees

Professional fees for advice on how to remove the contamination or the derelict structures are part of the cost.

Professional fees are payments to another person and are governed by the rules on payments to subcontractors, see CIRD63230.

CIRD63230 Subcontractors

FA01/SCH22/PARA9
CTA09/S1144 (5)(c)

This section sets out how Land Remediation Relief is given in respect of payments to sub-contractors.

This section contains the following guidance:

CIRD63235	Payments to an unconnected sub-contractor – on or after 1 April 2009
CIRD63240	Payments to a connected sub-contractor – on or after 1 April 2009
CIRD63250	Payments to an unconnected sub-contractor: periods on or before 31 March 2009
CIRD63255	Payments to a connected sub-contractor: periods on or before 31 March 2009

CIRD63235 Payments to an unconnected sub-contractor – on or after 1 April 2009

CTA09/S1144 (5)(c)

This guidance applies to expenditure incurred on or after 1 April 2009.

There are no special rules for payments to unconnected sub-contractors. The relief is given according to the normal rules for qualifying land remediation expenditure.

CIRD63240 Payments to a connected sub-contractor – on or after 1 April 2009

CTA09/S1175

This guidance applies to expenditure incurred on or after 1 April 2009.

The question of whether a sub-contractor is connected to a company is to be determined in accordance with the provisions of ICTA88/S839.

If the company and the sub-contractor are connected persons then a payment is qualifying expenditure on sub-contracted land remediation only if certain conditions are met. If the conditions are met, then the qualifying expenditure on subcontracted land remediation is restricted to relevant expenditure of the sub-contractor.

- The principal must have paid the sub-contractor. Until the payment has been made, there is no “sub-contractor payment” for the purposes of Land Remediation Relief.
- The sub-contractor must recognise the payment in its profit and loss account, in accordance with normal accounting practice:
- The whole of the payment must be brought into account in determining the sub-contractor's profit or loss for an accounting period that ends not more than twelve months after the accounting period of the contracting company in which the payment is an allowable deduction.
- All of the sub-contractor's relevant expenditure must be brought into account in determining the sub-contractor's profit or loss for an accounting period that ends not more than twelve months after the accounting period of the contracting company in which the payment is an allowable deduction.

For these purposes any apportionment of the expenditure, of either the company or the subcontractor, is to be made on a just and reasonable basis.

For details of what is the relevant expenditure of the sub-contractor, see CIRD63245

CIRD63245 Payments to a connected sub-contractor – Relevant expenditure of the sub-contractor

This section applies for expenditure incurred on or after 1 April 2009

Relevant expenditure of the sub-contractor is expenditure that is incurred by the sub-contractor in either:

- carrying out the land remediation activities to which the sub-contractor payment itself relates, or
- arranging for a third party to carry out that work

The relevant expenditure is restricted to expenditure that is:

- incurred on employee costs and materials
- not of a capital nature, and
- not subsidised.

Example

Company A engages the services of a connected party, Company B, to construct a new office building. Company B then engages the services

of a specialist firm, Company C, to remove Japanese Knotweed from the site.

Company A can claim Land Remediation Relief in respect of the payment made by Company B to Company C in respect of staffing or material costs. This is because Company B incurred these costs when it arranged for Company C to carry out the work on behalf of Company A.

CIRD63250 Payments to an unconnected sub-contractor: on or before 31 March 2009

FA01/SCH22/PARA9
FA01/SCH22/PARA11

A company incurs sub-contracted land remediation expenditure when it makes a payment to another person for relevant land remediation that it has contracted out to that person.

If the company and the sub-contractor are not connected persons, see CIRD63255, the whole of the subcontractor payment is treated as qualifying expenditure on sub-contracted land remediation.

The expenditure is not incurred for the purposes of Land Remediation Relief until the company makes the payment.

Example:

A Ltd contracts for an independent party, D Ltd, to remove asbestos from its offices. The work is carried out in its accounting period ended 31 December 2006. At the year end the bill has been received but only a deposit of £5000 has been paid. The balance of £20,000 is paid in January 2007.

A Ltd can elect for the £5,000 to be treated as a deduction and make a claim for Land Remediation Relief on the £5,000 in accounting period ended 31 December 2006.

For the purposes of Land Remediation Relief, A Ltd incurs the £20,000 in its accounting period ended 31 December 2007. Therefore A Ltd elects for the capital expenditure to be deducted and claims Land Remediation Relief in the accounting period ended 31 December 2007

CIRD63255 Payments to a connected subcontractor: on or before 31 March 2009

FA01/SCH22/PARA10

The question of whether a sub-contractor is **connected** to a company is to be determined in accordance with the provisions of ICTA88/S839.

If the company and the sub-contractor are connected persons then a payment is qualifying expenditure on sub-contracted land remediation only if certain conditions are met. If the conditions are met, then the qualifying expenditure on subcontracted land remediation is restricted to relevant expenditure of the sub-contractor (see below).

The expenditure is not incurred for the purposes of Land Remediation Relief until the company makes the payment.

The conditions are that in accordance with normal accounting practice:

- the whole of the payment is brought into account in determining the sub-contractor's profit or loss for an accounting period that ends not more than twelve months after the accounting period of the contracting company in which the payment is an allowable deduction, and
- all of the sub-contractor's relevant expenditure is brought into account in determining the sub-contractor's profit or loss for an accounting period that ends not more than twelve months after the accounting period of the contracting company in which the payment is an allowable deduction.

For these purposes any apportionment of the expenditure of either the company or the subcontractor, is to be made on a just and reasonable basis.

CIRD63260 Payments to a connected subcontractor: Relevant expenditure of the sub-contractor

This section applies to expenditure incurred on or before 31 March 2009.

Relevant expenditure of the sub-contractor is expenditure that is incurred by the sub-contractor in carrying out the land remediation activities to which the sub-contractor payment relates, that is:

- incurred on employee costs (see CIRD69005) and materials,
- not of a capital nature, and
- not subsidised (see CIRD63130).

If a sub-contractor, who is a connected party, in turn further sub-contracts work, then the payment to that sub-contractor does not qualify for relief.

Example

Company A engages the services of a connected party, Company B, to construct a new office building. Company B then engages the services of a specialist firm, Company C, to remove Japanese Knotweed from the site.

Company A cannot claim Land Remediation Relief in respect of the payment made by Company B to Company C.

CIRD63265 Verification

The local planning authority may also require, as a condition of granting planning permission, a verification report is prepared setting out what work has been carried out and showing that the site has been de-contaminated to an acceptable standard.

The cost of preparing the verification report is part of the cost of de-contaminating the site and is qualifying land remediation expenditure.

CIRD68000 Tax Credit

FA01/SCH22/PARA14 (1)
CTA09/S1151

A company that has a qualifying land remediation loss for an accounting period can make a claim to surrender that loss, or a part of that loss, in return for a payment of land remediation tax credit.

This applies both to a loss arising from cleaning up contaminated land and (for expenditure incurred on or after 1 April 2009) to a loss arising from bringing long term derelict land back into productive use.

The tax credit paid to a company is not the company's income for any tax purpose (FA01/SCH22/PARA18 and CTA09/S1156).

This section contains the following guidance:

CIRD68005	Qualifying land remediation loss
CIRD68010	Qualifying land remediation loss: Unrelieved losses
CIRD68015	Qualifying land remediation loss: Example
CIRD68020	Restriction of losses carried forward
CIRD68025	Amount of tax credit
CIRD68030	Claims for a tax credit
CIRD68035	Set off against corporation tax
CIRD68040	Arrears of PAYE or NI
CIRD68045	Interest
CIRD68050	Enquiries into returns
CIRD68055	Recovery of tax credit
CIRD68060	Tax Credit: chargeable gains

CIRD68005 Qualifying land remediation loss

FA01/SCH22/PARA14
CTA09/S1152

A company has a qualifying land remediation loss for an accounting period if, in that period, it

- carries on a trade or property business, and
- makes a valid claim under FA01/Sch22/Para13 or CTA09/S1149 for the enhanced relief (the additional 50%) in computing the taxable profit, or allowable loss, of its trade or property business, and
- incurs a loss in that trade or property business.

The enhanced relief may be for capital or revenue expenditure and may arise from cleaning up contaminated land or restoring derelict land.

Amount of qualifying land remediation loss

FA01/SCH22/PARA14 (3)

CTA09/S1152 (2)

The amount of the qualifying land remediation loss for an accounting period is the lesser of:

- the amount of the company's unrelieved trading loss or property loss for that period, and
- 150% of the qualifying land remediation expenditure for that period.

CIRD68010 Qualifying land remediation loss: Unrelieved losses

FA01/SCH22/PARA14 (4)

CTA09/S1153 (1)

The unrelieved trading loss, or property business loss, of a company is the amount of the loss for that accounting period reduced by:

- the amount of any claim that could be made, whether or not actually made, to set the loss against other profits of the same accounting period (ICTA88/S392A (1) and ICTA88/S393A (1)(a)), and
- any other relief claimed by the company in respect of the loss for that accounting period, e.g. losses set off against profits of an earlier accounting period (ICTA88/S393A (1)(b)) and losses surrendered to group or consortium members (ICTA88/S403 (1)).

The following losses are ignored in calculating the amount of unrelieved loss:

- trading losses, or property business losses, brought forward from an earlier accounting period (ICTA88/S393 (1)) and ICTA88/S392A (2), or
- any trading losses carried back from a later accounting period, (ICTA88/S393A (1)(b)).

CIRD68015 Qualifying land remediation loss: Example

This example should be read together with the guidance at CIRD68005 and CIRD68015.

Example:

Company A is carrying on a trade and incurs qualifying land remediation expenditure of £50,000 in an accounting period. The expenditure is an allowable deduction in computing its trading loss for CT purposes. In addition the company claims land remediation relief of £25,000 in respect of the expenditure.

After taking other expenses into account, the company has an overall trading loss for the accounting period of £80,000. The company has other income of £10,000 in the accounting period.

The company makes a claim to surrender the full amount of its qualifying land remediation loss in exchange for a payment of land remediation tax credit, but makes no other loss relief or group relief claims for the period:

- 150% of the qualifying land remediation expenditure is £75,000 (£50,000 x 150%).
- The company's unrelieved trading loss for the accounting period is £70,000 (£80,000 less £10,000).
- The company's qualifying land remediation loss is the lesser of these two amounts, i.e. £70,000.
- The tax credit payable is £11,200 (£70,000 x 16% see CIRD68015).
- The trading loss the company is able to carry forward to future accounting periods is £10,000 (£80,000 less £70,000).

CIRD68020 - Tax credit: restriction of losses carried forward

Amount of loss carried forward

The company's trading loss, or Schedule A loss, carried forward and set off against profits from those sources in later accounting periods is reduced by the amount of the loss surrendered (ICTA88/S392A and ICTA88/S393), (FA01/SCH22/PARA17).

Amount of the loss surrendered

The amount of the loss surrendered is:

- where the maximum amount of land remediation tax credit is claimed (see CIRD68025), the whole of the 'qualifying land remediation loss' (see CIRD68005 for definition) for that accounting period, or
- where the amount of land remediation tax credit claimed is less than the maximum amount that could be claimed, a corresponding proportion of the qualifying land remediation loss for that accounting period.

(FA01/SCH22/PARA17 (5)).

Example

Company A has a trading loss of £100,000 in an accounting period, of which £75,000 is a qualifying land remediation loss. It has no other income or gains in the accounting period, claims a payable tax credit of £8,000 and makes no other loss or group relief claims for the period.

The amount of land remediation tax credit payable equates to a qualifying land remediation loss of £50,000 (£50,000 x 16% = £8,000 - see CIRD68015).

The loss available to carry forward is therefore £50,000 (£100,000 less £50,000 qualifying land remediation loss surrendered).

CIRD68025 – Amount of tax credit

FA01/SCH22/PARA15
CTA09/S1154

The land remediation tax credit to which a company is entitled is an amount equal to 16% of the qualifying land remediation loss surrendered.

There are powers which enable the amount of the tax credit to be amended by Treasury Order, but the amount has been unchanged since the introduction of Land Remediation Relief.

CIRD68030 – Claims for a tax credit

FA98/Sch18/Para10 (2A)

A company must make a claim for land remediation tax credit in its return for the relevant accounting period. The claim can either be made in the original return, or in an amended return for the accounting period.

Content of claim

FA98/Sch18/Para83I

The claim must specify the amount of the tax credit claimed.

Example

Company A makes a loss of £50,000. The amount of the qualifying land remediation loss is £40,000. It claims in its return to surrender £10,000 of that loss in return for a tax credit.

It receives a tax credit of £1600 (£10,000 x 16%)

Amendment

FA98/Sch18/Para83J

The company can only amend or withdraw its claim by an amendment to its tax return.

Time limit

FA98/Sch18/Para83K

The time limit for the claim, amendment, or withdrawal is the first anniversary of the filing date for the relevant company tax return. However, the company may make a claim, amendment or withdrawal at a later date if an Officer of Revenue and Customs allows it.

Where there is a late claim, HMRC will deal with in accordance with the guidance at Statement of Practice SP05/01. While this does not specifically refer to Land Remediation Relief tax credits, the approach is a general one that we adopt.

CIRD68035 - tax credit: set off against corporation tax

FA01/SCH22/PARA16 (2)

CTA09/S1155 (2)

Land remediation tax credit payable, and any interest due on it under ICTA88/S826, may be applied to discharge any of the company's liability to pay CT.

If tax credit is set off against the CT liability then the obligation to pay the tax credit is discharged.

CIRD68040 - tax credit: Arrears of PAYE or NI

FA01/SCH22/PARA16 (4)

CTA09/S1155 (6)

A tax credit should not be paid until the company has paid any amounts owing:

- under the PAYE regulations, or
- any Class 1 national insurance contributions,

for a payment period ending in that accounting period.

Payment period

'Payment period' means a period, ending on the 5th day of a month, for which the company is liable to account to HMRC for income tax and national insurance contributions.

CIRD68045 Interest

ICTA88/S826 (3B)

Interest under ICTA88/S826 is payable on land remediation tax credit from the material date, i.e. the later of:

- the filing date for the company's tax return for the relevant accounting period, and
- the date on which the company tax return, or amended return, containing the claim is delivered to HMRC.

CIRD68050 Enquiries into returns

FA01/SCH22/PARA16 (3)

CTA09/S1155 (4)

If HMRC opens an enquiry into a company's tax return for an accounting period which includes a claim for land remediation tax credit, then no payment need be made until those enquiries are completed.

However, in such circumstances HMRC may make a provisional payment of such amount as it thinks fit.

CIRD68055 - Remediation of contaminated or derelict land: tax credit: recovery of tax credit

FA98/Sch18/Para52 (2)

Where land remediation tax credit is paid to a company and it is discovered that the payment is excessive, HMRC may make a 'discovery' assessment to recover the overpayment as if it is unpaid tax of that accounting period.

Excessive interest paid under ICTA88/S826 may be recovered in the same way (ICTA88/S826 (8A)).

Penalty

FA98/Sch18/Para83L

The company is liable to a penalty where it:

- fraudulently or negligently makes a claim and that claim is incorrect, or
- discovers that a claim is incorrect and does not remedy the error without unreasonable delay.

The maximum penalty payable is an amount equal to the excess land remediation tax credit paid, i.e. the difference between the amount actually claimed and the amount to which the company is entitled in the accounting period.

CIRD68060 - Remediation of contaminated or derelict land: tax credit: chargeable gains

FA01/SCH22/PARA19

CTA09/S1157

Where land remediation tax credit is paid, the qualifying land remediation expenditure related to the qualifying land remediation loss surrendered to HMRC is treated as not being an allowable deduction for in computing chargeable gains or allowable losses for corporation tax purposes (TCGA92/S39).

CIRD69000 Definitions:

This section contains the following definitions

CIRD69001	Controlled Waters
CIRD69005	Employee Costs
CIRD69010	Land in the UK
CIRD69015	Major interest in land in the UK
CIRD69020	Person with a relevant connection to the company
CIRD69025	Staffing costs

CIRD69001 Definition: Controlled Waters

FA01/SCH22/PARA31 (2)

CTA09/S1179

In broad terms controlled waters means territorial waters within the 3 nautical mile limit, coastal waters extending inland, inland waters and ground water.

Specifically:

- in England and Wales it has the same meaning as in Part III Water Resources Act 1991.
- In Scotland it has the same meaning as in Section 30A, Control of Pollution Act 1974.
- In Northern Ireland, it means water in waterways and underground strata as defined in Article 2 (2), Water (Northern Ireland) Order 1999.

CIRD69005 Definition: Employee Costs

FA01/SCH22/PARA5

The relevant employee costs are those paid to, or in respect of, directors or employees directly and actively engaged in the relevant land remediation.

This includes:

- all salaries, wages, perquisites and profits whatsoever, paid to directors or employees, but does not include benefits in kind,
- secondary Class 1 national insurance contributions paid by the company, and
- contributions paid by the company to any pension fund (within the meaning of ICTA88/S231A (4)) operated for the benefit of directors or employees of the company.

Benefits in kind, payments to an employee benefit trust or payments under a share incentive scheme are not employee costs.

Secretarial and administrative staff:

FA01/Sch22/Para5 (1)

Employee costs do not include the earnings, pension contributions etc of secretarial and administrative staff.

This is because employees who only provide secretarial or administrative services in support of those directly and actively engaged in relevant land remediation are not considered to be actively and directly engaged in relevant land remediation activities.

80:20 Rule

FA01/Sch22/Para5 (3)

Where a director or employee is directly and actively engaged in relevant land remediation for only part of their time, the following rules apply:

- If the time spent is less than 20% of their total working time in an accounting period, then none of the employee costs are treated as attributable to relevant land remediation.
- If the time spent is greater than 80% of their total working time in an accounting period, then all of the employee costs are treated as attributable to relevant land remediation.
- In all other cases an appropriate proportion of the employee costs are to be treated as attributable to relevant land remediation.

CIRD69010 Definition: Land in the UK

FA01/SCH22/PARA31

This guidance is for expenditure incurred on or before 31 March 2009

“Land in the UK” means any estate, interest or rights in or over land that is situated in Great Britain and Northern Ireland.

An enforceable option to purchase land, and an enforceable agreement or contract for a lease, falls within this definition.

Land includes buildings on the land.

CIRD69015 Definition: Major Interest in Land

CTA09/S1178A

This paragraph applies for expenditure incurred on or after 1 April 2009

There are variations in property law across the United Kingdom.

The definition of a “major interest in land” is intended to mean that the effect is the same irrespective of where in the United Kingdom the land is situated.

- A company that owns the land has a major interest in the land
- A company that is granted a lease of at least seven years over the land has a major interest in the land.

- A company that is assigned a lease with at least 7 years remaining has a major interest in the land.

Land includes buildings on the land.

CIRD69020 Definition: person with a relevant connection to a company

CTA09/S1178

FA01/SCH22/PARA31 (4)

The question of whether a person is connected to a company is determined in accordance with the provisions of ICTA88/S839 (connected persons).

A person has a relevant connection to a company, where the company's land is in a contaminated state wholly or partly as a result of anything done, or not done, at any time by that person, if:

- the person was connected to the company at that time.
- the person was connected to the company at the time when the major interest in the (for expenditure incurred on or before 31 March 2009 simply the interest in the) land was acquired, or
- the person was connected to the company at any time when the land remediation is, or was, undertaken by the company.

CIRD69025 Definition: Staffing costs

CTA09/S1170

The relevant staffing costs are those paid to, or in respect of, directors or employees directly and actively engaged in the relevant land remediation.

Staffing costs include:

- earnings consisting of money, paid because of the employment of the director or employee.
- secondary Class 1 national insurance contributions paid by the company, and
- contributions paid by the company to any pension fund operated for the benefit of directors or employees of the company.
- Expenses (other than benefits in kind) paid to directors or employees to cover expenses that they have paid because of their employment

Benefits in kind, payments to an employee benefit trust or payments under a share incentive scheme are not staffing costs.

Secretarial and administrative staff

CTA09/S1171

Staffing costs do not include the earnings, pension contributions etc of secretarial and administrative staff.

This is because employees who only provide secretarial or administrative services in support of those directly and actively engaged in relevant land remediation are not considered to be actively and directly engaged in relevant land remediation activities.

80:20 Rule

CTA09/S1171

Where a director or employee is directly and actively engaged in relevant land remediation for only part of their time, the following rules apply:

If the time spent is less than 20% of their total working time in an accounting period, then none of the staffing costs are treated as attributable to relevant land remediation.

If the time spent is greater than 80% of their total working time in an accounting period, then all of the staffing costs are treated as attributable to relevant land remediation.

In all other cases an appropriate proportion of the staffing costs are to be treated as attributable to relevant land remediation