

CIRD60000 Land Remediation Relief

FA01/Sch22
CTA09/Part14

The broad aim of the legislation

Land Remediation Relief was introduced in 2001 to address market failure, in bringing back into use, land that had been blighted by previous use for industrial purposes. The relief applies to both capital and revenue expenditure.

In 2009, Land Remediation Relief was extended to address market failure in bringing long term derelict land back into use. Again an incentive is given where land, whose development has been blighted by various kinds of enduring dereliction, is brought back into productive use.

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.

The more detailed guidance is at CIRD60050 onwards.

Although both Land Remediation Relief for land in a contaminated state and Land Remediation Relief for derelict land are intended to help bring land back into productive use, they deal with different issues.

A site does not need to be both derelict and contaminated to qualify. For this reason there are separate summaries for:

- Land Remediation Relief for land in a contaminated state; and
- Land Remediation Relief for derelict land

You should read the summary of the treatment of arsenic, radon and Japanese knotweed with the summary of the treatment for land in a contaminated state for the period from 1 April 2009 at CIRD60015.

The following matters are covered:

CIRD60010	Land Remediation Relief – Outline - Periods to 31 March 2009
CIRD60015	Land Remediation Relief from 1 April 2009 – Outline - Land in a Contaminated state
CIRD60020	Land Remediation Relief from 1 April 2009 – Outline - Derelict Land
CIRD60025	Land Remediation Relief from 1 April 2009 – Outline – Arsenic, radon and Japanese knotweed

CIRD60010 Land Remediation Relief – Outline - Periods to 31 March 2009

This is an **outline** of the scheme as it applied for expenditure incurred between 1 April 2001 and 31 March 2009.

Land Remediation Relief is a relief from **corporation tax** only. It provides a deduction of 100%, plus an additional deduction of 50%, for **qualifying expenditure** incurred by companies in cleaning up land that was acquired from an unconnected person 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 remediation 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 for the period 1 April 2001 to 31 March 2009 is at CIRD60050 onwards.

CIRD60015: Land Remediation Relief from 1 April 2009 – Outline - 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 acquired in a contaminated state.

Land Remediation Relief is a relief from **corporation tax** only. It provides a deduction of 100%, plus an additional deduction of 50%, for **qualifying expenditure** incurred by companies in cleaning up land acquired from a third party 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 remediation 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. The 50% additional relief is given in the same period as the actual expenditure is charged to the profit and loss account.

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 is at CIR60050 onwards.

A summary of how the scheme applies to arsenic, radon and Japanese knotweed is at CIR60025.

CIRD60020 Land Remediation Relief from 1 April 2009 – Outline - Derelict Land

This is an **outline** 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** only. 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**
- be 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 any 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).

This list is specific and does not work by analogy.

There are no stipulations on the use to which the site was previously put.

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 remediation 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. This relief is

given in the same period as the actual expenditure is treated as a deduction in computing their taxable profits.

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 is at CIRD60050 onwards.

CIRD60025 Land Remediation Relief from 1 April 2009 - Outline – Arsenic, radon and Japanese knotweed

This is an **outline** of how the scheme applies to expenditure incurred on or after 1 April 2009 on the remediation of land that is contaminated with arsenic, arsenical compounds, radon and Japanese knotweed. The detailed guidance is at CIRD61400 onwards.

You should read this summary with the summary of the treatment for land in a contaminated state for the period from 1 April 2009 at CIRD60015.

Land Remediation Relief is a relief from **corporation tax** only. It provides a deduction of 100%, plus an additional deduction of 50%, for **qualifying expenditure** incurred by companies in cleaning up land acquired from a third party that is in a **contaminated state** as a result of former industrial activity.

Because they may represent a significant obstacle to redevelopment. Land Remediation Relief is **also** available for the removal of contamination arising from:

- Naturally occurring arsenic and arsenical compounds;
- Radon; and
- Japanese knotweed.

These exceptions have been specifically allowed by secondary legislation; other, even seemingly closely related, items **do not** attract relief 'by analogy'.

Japanese knotweed

Because Japanese knotweed is an invasive and destructive plant, there are some differences in the way that Land Remediation Relief applies to expenditure on dealing with land infested with Japanese knotweed.

The requirement that land is in a contaminated state at the time of acquisition does not apply to Japanese knotweed.

As a result Land Remediation Relief is available where, for example, Japanese knotweed has been introduced to a site by fly-tipping.

Because of developments in the technologies for dealing with Japanese knotweed, Land Remediation Relief is no longer available where material containing Japanese knotweed is taken to landfill.

All other methods, including the use of off-site treatment centres continue to qualify for relief.

Polluter pays:

The principle that the polluter should bear the cost of cleaning up any pollution is fundamental to the policy behind Land Remediation Relief. This includes the removal of Japanese knotweed. If a company does not take appropriate

action and allows an infestation of Japanese knotweed to spread then it is treated as the polluter and is unable to claim Land Remediation Relief.

HMRC accept that a company is taking remedial action if it takes appropriate specialist advice, and acts in accordance with that advice. For example, 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 further information on the treatment under Land Remediation Relief of arsenic, radon and Japanese knotweed see CIR61400 onwards

CIRD60050: Land Remediation Relief

This section contains more **detailed** guidance on Land Remediation Relief.

For those looking only for **summaries** of Land Remediation Relief, these are at CIRD60005 onwards.

Individuals and partnerships

Land Remediation Relief is a corporation tax relief. It is available where companies acquire land in a contaminated or derelict condition.

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.

The guidance contains the following topics:

CIRD60051	Acquiring land
CIRD60055	Timing of relief
CIRD60060	Claims
CIRD60061	Late claims
CIRD60065	Real Estate Investments Trusts
CIRD60070	Capital Expenditure
CIRD60100	Excluded from the relief
CIRD61000	What is Land in a contaminated state?
CIRD62000	Derelict Land
CIRD63000	Qualifying Land Remediation Expenditure
CIRD68000	Tax Credit
CIRD69000	Definitions

CIRD60051 Acquiring land

FA01/Sch22/Para12

CTA09/S1146, CTA09/S1146A, CTA09/S1149

The “polluter pays” principle applies to Land Remediation Relief. Companies responsible for the contamination or dereliction cannot claim the relief. With only a limited number of exceptions (see below), land has to have been acquired in a derelict or contaminated state.

- For periods up to 31 March 2009, the company has to have acquired land in the UK.
- For periods on or after 1 April 2009, the company has to have acquired a major interest in the land in the UK.

Under the Interpretation Act 1978, “land” includes the buildings on the land.

For periods on or after 1 April 2009, the Treasury has powers to remove the requirement that the land was acquired in a contaminated state in situations specified in secondary legislation.

The only situation where Land Remediation Relief may be claimed in respect of something that was not present when the land was acquired is for Japanese knotweed. This reflects the fact that Japanese knotweed has often been spread by fly-tipping.

For further guidance see:

CIRD60120	Polluter pays
CIRD61435	Japanese knotweed –fly-tipping and natural spread
CIRD69010	Definition: Land in the UK
CIRD69015	Definition: Major interest in land

CIRD60055 Timing of relief

FA01/Sch22/Para13

CTA09/S1149 (5)

The accounting treatment determines when a company can claim Land Remediation Relief for revenue expenditure.

A company claims Land Remediation Relief for qualifying revenue expenditure in the accounting period where the expenditure is deducted in calculating the profits in accordance with generally accepted accounting practice (GAAP).

HMRC officers should refer to HMRC accountants if they have queries on how particular expenditure is dealt with under GAAP.

Example:

A Ltd starts to build a housing estate. A Ltd engages a specialist contractor to remove contamination left by an old industrial unit. At the end of year one A Ltd treats the expenditure as work-in-progress. In year two the development is completed and the properties sold. A Ltd deducts the expenditure on cleaning up the site in calculating the profits in year two.

A Ltd may claim Land Remediation Relief in year two. A claim in respect of any other year will fail.

Guidance on the treatment of capital expenditure is at CIRD60070 onwards.

CIRD60060: Land Remediation Relief: Claims

FA98/Sch18/Para55-56

The general time limit for making claims under corporation tax self assessment applies to the claim for an additional 50% relief under Land Remediation Relief.

HMRC does not specify any particular format for claims for Land Remediation Relief:

- A computation reflecting the claim which is submitted in time is sufficient.
- The claim should be made in the Self Assessment or in an amended Self Assessment, if within the time limits for so doing

A company can make a supplementary claim or amend or withdraw the existing claim within the time allowed for making the original one. If it is within the time limit then the Company should submit an amended Self Assessment.

If circumstances change so that the claim becomes excessive then the Company must notify HMRC. If it is within the time limit then the Company should submit an amended Self Assessment.

If an Officer of HMRC becomes aware that a claim has become excessive then, if it is within the enquiry window, the Officer should open an enquiry and invite the Company to amend its self assessment. Otherwise the Officer should make a discovery assessment as the claim has become excessive.

A claim for a tax credit under Land Remediation Relief must be made in a return, see CIRD68030.

An election to treat capital expenditure as a deduction in arriving at the profits must be made within two years of the end of the accounting period. For further guidance on this see CIRD60075.

For guidance on late claims see CIRD60061.

CIRD60061: Land Remediation Relief: Late claims

HMRC will deal with a late claim for Land Remediation Relief in accordance with the guidance at Statement of Practice SP05/01. While this does not specifically refer to Land Remediation Relief, this is the general HMRC approach.

For further guidance on time limits for claims made by companies, see the Company Taxation Manual at CTM90600 onwards.

Officers of HMRC should carry out a **detailed** examination of all the facts before accepting any late claim. If the Area Office decide not to admit the late claim then they should send a report, together with all of the relevant papers, to CT&VAT (Technical), using the template found by clicking the Technical Help button in the left bar of the Manual. CT&VAT (Technical) will then advise whether the late claim should be admitted or formally refused.

CIRD60065 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).

CIRD60070 Land Remediation Relief – Capital expenditure

FA01/SCH22/PARA1 (1)
CTA09/S1147

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 or derelict state, and
- the company incurs capital expenditure on qualifying land remediation in respect of the land.

This section contains the following further guidance:

CIRD60075	Capital Expenditure – The election
CIRD60080	Capital Expenditure – Pre commencement expenditure
CIRD60085	Capital Expenditure – Capital Allowances
CIRD60090	Capital Expenditure – Capital Gains Tax

CIRD60075 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:

Z Ltd 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.

Z Ltd 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.

The legislation does not specify any particular form for the election. Officers of HMRC will accept timeous computations reflecting the claim for the capital expenditure to be treated as a revenue deduction to be sufficient notice of election.

For further guidance on claims and elections for Land Remediation Relief see CIRD60060.

CIRD60080 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 to treat the expenditure as a deduction in calculating the profits, 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.

CIRD60085 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 could claim 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:

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

A Ltd 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.

Industrial Buildings Allowances & Agricultural Buildings Allowances

Industrial Buildings Allowances and Agricultural Buildings Allowances are being phased out by FA2008. However if a company incurs expenditure that qualifies for these allowances whilst they are being phased out then it cannot make an election to treat capital expenditure as qualifying expenditure for Land Remediation Relief.

Further guidance on what qualifies for capital allowances can be found in the Capital Allowances Manual.

CIRD60090 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 capital losses.

CIRD60100 Excluded from the relief:

Land Remediation Relief is not available:

- Where arrangements have been put in place which either create or enhance a claim, or
- For cleaning up nuclear sites, or
- Where the company, or a party connected to the company, was responsible in any way (by action or inaction) for causing the contamination or dereliction (the “polluter pays” principle), or
- For landlords, where the contamination is caused by a tenant

This section contains the following further guidance on these exclusions:

CIRD60105	Arrangements that create or enhance a claim
CIRD60115	Nuclear Sites
CIRD60120	Polluter Pays
CIRD60190	Landlords

CIRD60105 Arrangements put in place which either create or enhance a claim

FA01/SCH22/PARA29
CTA09/S1169

There is anti-avoidance legislation to prevent:

- manufactured claims, or
- claims being 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.

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

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, and
- 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 is fundamental to the policy behind Land Remediation Relief.

Under the scheme it is intended that the polluter, and any party connected to the polluter, do not 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 CIRD69025 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	Acquiring land in a contaminated state - examples
CIRD60145	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
CIRD60165	Underground car parks
CIRD60170	Polluter pays – derelict land

CIRD60125: More than one polluter

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

It is important to note that, because a party that is wholly or only partly responsible (by their action or inaction) for the land being contaminated is treated as the polluter, 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. Where a company (or a person with a relevant connection) is treated as the polluter then that company cannot claim Land Remediation Relief on any part of the cost of cleaning up that site.

Example – Partly responsible

A Ltd acquires a long-standing factory from B Ltd. The site has been contaminated by waste from B's trade. A Ltd continues to operate the site for 5 years before installing equipment to remove the waste. Although the vast majority of the contamination took place before A Ltd acquired the site, the contamination also continued whilst A Ltd operated the site.

Both A Ltd and B Ltd are treated as the polluter for the purposes of Land Remediation Relief. A Ltd 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 B Ltd was responsible for the vast majority of the contamination.

Example – different contaminants

C Ltd acquired a site from D Ltd. At the time the site was acquired the land was in a contaminated state. C Ltd then operated from the site for a number of years, causing further pollution with a different contaminant. C Ltd then decides to clean up the site and re-develop.

C Ltd cannot claim Land Remediation Relief as they were partly responsible for the site being contaminated. The fact that D Ltd caused a different type of contamination does not affect this position.

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 loose fill asbestos insulation.

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 insulation. 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 insulation material as they were responsible for the construction of the building. The fact that the use of asbestos insulation 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, and
- 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, knowing that the pollution was present, 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 (for example by continuing the process that causes the pollution whether or not it was accepted practice at the time; or, for example, by failing to take steps to prevent the spread of 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 the company 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.

Not knowing that contamination was present when the site was acquired does not make the company responsible for that contamination when it is later discovered. The site was contaminated at acquisition, even if it was not recognised at the time. The company will be entitled to LRR on the subsequent clean up provided it has not added to the contamination in the interim.

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.

If the site was contaminated at acquisition (but at a level that did not require action under the then prevailing rules or practice) a clear up consequent upon a tightening of those rules or practice will attract LRR provided that the company has not added to the contamination (either by action or inaction) during its period of ownership.

CIRD60140: Acquiring land in a contaminated state – examples

The following examples show how the guidance at CIRD60135 is applied in different scenarios.

Example – Asbestos

A Ltd acquires a building which has some asbestos insulation. A Ltd 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, A Ltd needs to remodel the building and is advised that the work involved risks putting the asbestos into a dangerous state; removal is recommended. The company engages a specialist contractor to carry out the recommended removal.

A Ltd can claim Land Remediation Relief on the additional cost of engaging the specialist contractor to remove the potentially harmful asbestos. A Ltd is not the polluter as it did not install the asbestos. A Ltd did not remove the asbestos immediately, but in doing so it was acting in accordance with the guidelines; the asbestos not posing any risk of harm at that time. In addition, during the period of ownership it has carried out the appropriate maintenance in line with the guidelines to retain the asbestos in a safe condition.

Example – delay in cleaning up a site, part 1

B Ltd acquires a former industrial site with a disused empty fuel tank. B never uses the fuel tank. The land around the tank has been contaminated by fuel seeping from the tank during the previous ownership; by a party with no connection to B. Re-development of the site is delayed, but after 4 years B 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, B Ltd acquired a site with an empty disused fuel tank and did not use the tank. B has caused no additional contamination and B Ltd can therefore claim Land Remediation Relief on the cost of cleaning up the soil.

Example – delay in cleaning up a site, part 2

As a contrast, if the tank still contained fuel when acquired and this had continued to leak then B Ltd's inaction in not timeously attending to the leak would have contributed to the pollution and B Ltd would not qualify for Land Remediation Relief.

B Ltd cannot claim Land Remediation Relief, under the relief for land in a contaminated state, on the cost of removing the tanks as this cost would have been incurred even if the soil had not been contaminated. Relief may be available from 1 April 2009 under the relief for long term derelict land, see CIR62000.

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.

Example – delay in cleaning up a site

C Ltd purchases a former industrial works. A survey shows that the contamination is confined to one part of the site. Following expert advice that the contamination is not spreading, C Ltd decides not to remediate the site immediately and uses another area of the same site to carry out their manufacturing trade which causes no contamination. Five years later, C Ltd needs to expand and decides to carry out the clean up the unused area that is polluted.

There has been no additional contamination due to the delay in cleaning up the site. C Ltd can claim Land Remediation Relief on the **additional** cost of cleaning up the site.

CIRD60145 “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, or
- 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

A Ltd 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, B Ltd, to be redeveloped. As part of the work, B Ltd engages specialist contractors to remove all the asbestos waste.

As a connected party of the polluter, B Ltd cannot claim Land Remediation Relief on the cost of the asbestos removal.

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, or
- where the polluter grants a long lease of the site but retains a reversionary interest, or
- 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:

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

Although B Ltd has a major interest in the land (see CIRD69015) it cannot claim Land Remediation Relief as A Ltd, its landlord, was responsible for the pollution and A Ltd retains an interest in the land.

The position would be the same if B Ltd had granted a sub-lease to C Ltd and it was C Ltd who cleaned the site up. C Ltd would be unable to claim the relief as A Ltd, which caused the site to be contaminated, retained an interest in the site.

Example:

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

Although B Ltd has a major interest in the land (see CIRD69015) it cannot claim Land Remediation Relief. A Ltd was responsible for the pollution and has an option over the land; that is A Ltd retains an interest in the land.

CIRD60155 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 sells the land to say, a developer) 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 / developer 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:

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

Although B Ltd has a major interest in the land (see CIRD69015) it cannot claim Land Remediation Relief as A Ltd was responsible for the pollution and the agreement is a slice of the action contract.

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, knowing of the possible availability of LRR, negotiates with B Ltd to pay more than the open market value for the site in such a contaminated state; agreeing a price nearer to that which it would have commanded if not contaminated.

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 (CT Structure).

CIRD60165 Underground car parks

Ventilation to prevent the build up of exhaust gases does not qualify for Land Remediation Relief.

Gases that build up as a result of the use of the building, rather than seep in from the surrounding ground, are excluded both because the gases that are being removed were not present at acquisition and under the “polluter pays” principle.

CIRD60170 Polluter Pays – derelict land

CTA09/S1150

Land Remediation Relief is not available if the company, or a connected party, allowed the property to become derelict.

Companies need to be able to show that the site was derelict when acquired by the company, or a connected party.

Guidance on evidence that shows that land was derelict can be found at:

CIRD62020	English National Land Use Database
CIRD62025	Scottish Vacant and Derelict Land Survey
CIRD62030	Evidence for dereliction

CIRD60190 Landlords

CTA09/S1150
CTA09/S1178A

A Landlord cannot claim Land Remediation Relief for cleaning up contamination caused by one of their tenants.

A Landlord can claim relief for cleaning up contamination that was already present when they acquired the property from an unconnected person with no 'slice of action' payment.

Example

A Ltd lets industrial premises to B Ltd, whose processes produce a certain amount of contamination. A Ltd decides to buy out the remaining 9 years of B Ltd's lease and re-develop the site for residential use.

A Ltd engages a specialist remediation contractor to bring the site up to a standard that can be used for residential purposes.

A Ltd cannot claim Land Remediation Relief as the site was not contaminated when it acquired its interest in the site. A Ltd is also the polluter as it allowed B Ltd to carry out a process that was contaminating the site.

Example

A Ltd purchases an old factory site divided into small industrial units. Although none of the current tenants are causing pollution, the site is contaminated from activities carried on previously. The contamination is contained within one area of the site.

After a year, A Ltd buys out the remaining tenants and re-develops the site for residential use. Because the level of contamination is too high for a residential development, A Ltd has to remediate the site.

A Ltd can claim Land Remediation Relief as the land was already contaminated at the time of acquisition and nothing has been added to it subsequently.

A Ltd is not the polluter as the contamination has not spread during its period of ownership (see CIRD60135).

CIRD61000 What is “land in a contaminated state”?

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

Feed-back from industry has indicated that a lack of certainty over whether or not particular work qualifies for the relief has meant that the availability of Land Remediation Relief had not influenced developers' decisions to the intended extent.

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, which work qualifies for Land Remediation Relief. The availability of Land Remediation Relief is intended to positively influence developers' decisions.

This section looks at the position pre- and post the change over date:

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' as defined in the Environmental Protection Act, Part IIA.

Although both sets of legislation are seeking to address the legacy of former industrial activities, land that is contaminated for the purposes of Land Remediation Relief may not be contaminated land for the purposes of the Environmental Protection Act.

This section looks first at the question of what type of contamination qualifies for the relief and, second, 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

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

FA01/SCH22/PARA3

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.

Work carried out as a precaution, without evidence that a substance was present, does not qualify for relief.

“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, accepting 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)

For periods ending on or before 31 March 2009, “Harm” 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
CIRD61035	Flood prevention
CIRD61040	Landscaping and earthworks
CIRD61045	Ground gases

CIRD61010 Land in a contaminated state: Example

This guidance applies to 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 elect to treat the cost of installing the membrane (including the cost of the membrane) as a revenue expense and claim Land Remediation Relief 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 to 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.

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

Relief is not available where the company (or a connected party) was responsible for introducing the Japanese Knotweed (the “polluter pays” principle). There is further guidance on how the polluter pays principle applies to Japanese knotweed at CIRD61440.

Expenditure incurred on or before 31 March 2009 on removing Japanese Knotweed qualifies 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 restriction excluding expenditure on the removal of Japanese Knotweed to landfill does not apply for expenditure incurred on or before 31 March 2009. There is no restriction on the treatment method which can be used at that time.

CIRD61020 Japanese Knotweed – Change of view

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

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 CIRD60135 (see below) 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.

The reference to CIRD60135 is to the version of the guidance that was current at the time the change of view statement was published. The current interpretation of what is a substance is at CIRD61005.

CIRD61025 –Burials

This guidance applies to 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. Nor does it normally come within any of the other categories in [CIRD60010](#). The cost of their removal is therefore not, normally, qualifying land remediation expenditure.

However, some burials may exceptionally 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 applies to expenditure incurred on or before 31 March 2009.

FA01/Sch22/Para4 (3)(b)

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. A void is not a substance in, on or under land which is causing harm.

Expenditure on filling in a hole, created during the remediation process by the removal of contaminated waste, qualifies for Land Remediation Relief where it amounts to restoring the site to its former state (that is to the state pre-contamination).

Expenditure on compacting the soil used to fill a hole, created during the remediation process by the removal of contaminated waste, will only qualify for Land Remediation Relief where it restores the site to its former state (that is to the state pre-contamination).

Compaction to a higher standard to enable construction to take place on the site does not qualify as it does not restore the site and the expenditure would have been incurred whether or not the site had been contaminated.

Example:

A pipe carrying waste material passes under a piece of ground used as the work's lorry park. Over the years the movement of the heavy lorries causes a small but continuous leak so that the ground around the pipe becomes contaminated.

The works close and A Ltd buys the site for re-development. A Ltd digs up the lorry park and removes the contamination. A Ltd then fills the hole, finishing off with a layer of topsoil.

In addition to the cost of removing the contamination, A Ltd can claim Land Remediation Relief on the cost of filling in the hole as a cost of restoration. A Ltd cannot claim Land Remediation Relief on the cost of importing topsoil as this was a cost of the development and would have been incurred whether or not the site was in a contaminated state.

Example:

B Ltd buys a site for re-development. The previous structures have been demolished, but a number of pits remain, where there were

previously cellars or small tanks. B Ltd fills the pits in and levels the ground before starting to build on the site.

B Ltd cannot claim Land Remediation Relief. The land was not in a contaminated state; it was simply that there was a hole in the ground.

CIRD61035 – Flood prevention

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

FA01/Sch22/Para4

Flood prevention measures do not qualify for Land Remediation Relief.

Land Remediation Relief is intended to deal with the problem of sites that were contaminated by previous use. To qualify, the contaminant must be present on the site at the time of acquisition.

Flood prevention measures are intended to prevent water (and any pollution in the water) coming onto the site and so are not relevant land remediation.

This is because they do not address the problem of something that is already present in on or under the land when the site was acquired.

CIRD61040 – Landscaping and earthworks

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

FA01/Sch22/Para2

The only landscaping that may qualify for Land Remediation Relief is where it is part of the cost of restoring the site.

Landscaping to level the site for future construction or to provide access does not qualify for Land Remediation Relief.

Landscaping such as that involved in the creation of facilities such as golf courses or sporting fisheries does not qualify for Land Remediation Relief.

Land Remediation Relief is only available for the **additional** expenditure caused by the fact that the land was in a **contaminated state**.

Example:

A Ltd buys a site that is in a contaminated state. They dig out an area of contaminated soil which is treated at an off-site remediation centre. The cleaned soil is returned to the site and the hole is filled in.

A Ltd can claim Land Remediation Relief on the cost of treating the soil together with the cost of filling in the hole and returning the site to the state before contamination.

Example:

B Ltd buys a site that is in a contaminated state. They dig out an area of contaminated soil which is treated at an off-site remediation centre. The cleaned soil is returned to the site and used in landscaping the site as a golf course.

B Ltd can claim Land Remediation Relief on the cost of treating the soil, including the cost of returning it to the site.

B Ltd cannot claim Land Remediation Relief on the cost of landscaping the site as a golf course as this is not restoration of the site and is not **additional** expenditure caused by the fact that the land was in a **contaminated state**.

CIRD61045 Ground gases

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

A number of gases that 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 expenditure incurred on or before 31 March 2009 there is no requirement that the ground gas is present as a result of industrial activity. Naturally occurring gases that are present as a result of natural processes and are potential causes of harm, such as radon, may qualify for Land Remediation Relief.

Expenditure on preventing build up of gases from activities carried on in the building are excluded under the polluter pays principle, see CIRD60165

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

CIRD61050 – “Relevant land remediation”

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

FA01/Sch22/Para4

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 then 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
CIRD61095	Abortive methods of remediation

CIRD61055 Preventing, minimising, remedying or mitigating:

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

FA01/Sch22/Para4

A very wide range of measures 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 more commonly encountered methods.

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 applies to expenditure incurred on or before 31 March 2009.

Cover systems involve placing a barrier 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).

As part of the remediation strategy agreed with the local authority, 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. HMRC accept that the land was contaminated for the purposes of Land Remediation Relief as the level of contamination exceeds the soil guideline value for that type of housing development and as part of the agreed remediation strategy A Ltd installed the cover system to minimise the potential harm.

Example

A Ltd are developing a housing estate. As part of the development, A Ltd will import topsoil to create a layer 600mm thick in the gardens of the new houses.

On part of the site, the level of contamination is above the soil guideline value (see CIRD61335).

As part of the remediation strategy agreed with the local authority, A Ltd import additional topsoil to create a layer 1200mm thick to prevent take up of contamination by home-grown vegetables.

HMRC accept that the land was contaminated for the purposes of Land Remediation Relief as the level of contamination exceeds the soil guideline value for that type of housing development. However A Ltd would have imported 600mm topsoil whether or not the site had been contaminated. A Ltd can only claim Land Remediation Relief on the **additional cost** of the extra 600mm installed as part of the agreed remediation strategy.

CIRD 61065 In-ground barriers and cut-off walls

This guidance applies to 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 vary 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 membrane or break layer as a barrier to prevent the contamination leaching from the contaminated part.

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

CIRD61070 Dig and dump:

This guidance applies to 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. 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 former state (FA01/Sch22/Para4 (3)(b)).

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

For further information on Japanese knotweed and Land Remediation Relief for expenditure incurred on or before 31 March 2009, see CIRD61015.

CIRD61075 Biological treatment

This guidance applies to 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. This is an area where the technology involved is developing.

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 now de-contaminated 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 to restore it to its former state.

CIRD61080 Cement based stabilisation

This guidance applies to 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 polychlorinated bi-phenyls (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 will qualify for Land Remediation Relief where it is preventing the potential harm by containing the contamination.

CIRD61085 Different grades of Cement:

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

FA01/Sch22/Para4

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

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 is 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. X Ltd has acted in accordance with the British Standard applicable at the time.

CIRD61090 Foundations

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

For expenditure incurred on or before 31 March 2009, the additional costs of restoring the land could qualify for Land Remediation Relief; however the foundations do not restore the site to the former state. The foundations are for a new building. Therefore Land Remediation Relief is not available for expenditure on the foundations themselves nor is it available on the extra costs caused by disturbance

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

CIRD61095 Abortive methods of remediation

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

FA01/Sch22/Para4

If a company carries out an options appraisal and decides on a remediation strategy that subsequently proves unsuccessful, then Land Remediation Relief is still available on the expenditure incurred.

Example:

Following an appraisal of the options, F Ltd decides to install a new type of in ground barrier to contain contamination. The validation process shows that the method is not entirely successful and, following further advice, F Ltd decides to replace the barrier with one of a different type. F Ltd is successful in recovering 80% of the cost of the failed system from advisors and contractors.

F Ltd can claim Land Remediation Relief on the 20% of the costs of the expenditure on the ineffective barrier. It cannot claim on the 80% of the cost that has been reimbursed.

F Ltd will be able to claim Land Remediation Relief on the replacement barrier.

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**, not when the expenditure is treated as a deduction in arriving at the accounting profit. As the expenditure was incurred before 1 April 2009, it is the guidance at CIRD61001 that applies.

CIRD61205 Land in a Contaminated State

CTA09/S1145

This guidance applies to 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 covers how to apply the statutory tests and what is specifically excluded from relief:

CIRD61210	Exclusions
CIRD61215	Interaction with relief for derelict land
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

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

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. A Ltd install additional drainage to lower the local water table.

A Ltd cannot claim Land Remediation Relief on the expenditure on drainage works.

Example

B Ltd purchases a site with a high groundwater table. As a legacy from previous industrial activity, there are high levels of sulphate in the groundwater. B Ltd develops the site, using a higher grade of cement to mitigate the effects of the levels of sulphate.

B Ltd can claim Land Remediation Relief on the **additional cost** incurred on the higher grade cement, for further information on this point see CIRD61530.

CIRD61220 Exclusions: Living organisms

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

CTA09/S1145 (2)(a)

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. This includes removal of “plague pits” (see CIRD61025).

Animal droppings:

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

Hydrocarbons

Hydrocarbons resulting from the distillation of coal or the cracking of crude oil, 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.

CIRD61215 Interaction with relief for derelict land

Land Remediation Relief deals with the problems of derelict land and the problems of land in a contaminated state.

Whether a site qualifies as derelict or contaminated are separate issues. Although in practice sites that are derelict are often contaminated as well. For the purposes of Land Remediation Relief the two issues are dealt with separately.

Example:

A Ltd acquires the site of a former industrial unit that has been derelict since 1995. In order to re-develop the site, A Ltd has to remove the concrete bases for the machinery and to remove contaminated waste by products that had been buried in a pit on the site.

The site qualifies as derelict so A Ltd can claim Land Remediation Relief in respect of the removal of the concrete bases. A Ltd can also claim Land Remediation Relief for removing the contaminated waste.

Example:

B Ltd acquires the site of a former industrial unit that the previous owners had allowed to become derelict since it closed in 2007. In order to re-develop the site, B Ltd has to remove the concrete bases for the machinery. B Ltd also had to remove contaminated waste by products that had been buried in a pit on the site.

B Ltd cannot claim Land Remediation Relief in respect of the removal of the concrete bases as the site had only recently fallen derelict. However B Ltd can claim Land Remediation Relief for removing the contaminated waste.

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 the UK standard industrial classification code (SIC) 92 categories C, D, E & F. These are:

- Mining and quarrying – including extraction of fuels, minerals and oils; or
- Manufacturing – including fuel processing and production, manufacture of chemicals and man-made fibres, the metal goods, engineering and vehicles industries and other manufacturing industries; or
- Supply of electricity, gas and water - the production and distribution of electricity, gas and water; or
- 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, from an unconnected third party, offices which contain asbestos panelling. They are advised that the panels have not been maintained in accordance with the guidelines and that the panels are now in a state that requires removal.

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 a now banned chemical herbicide.

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 CIR D61255.

CIRD61255 Non industrial contamination:

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

CTA09/S1145 (3)

Post 31 March 2009 there is power to bring contaminants that are present as a result of non-industrial activities within the scope of Land Remediation Relief by secondary legislation.

The exceptions provided for by secondary legislation are specific. Other, seemingly closely related, items do not attract relief 'by analogy'.

For further information on this point see CIRD61400

CIRD61260 Evidence for Industrial activity

CTA09/S1145 (2)(b)

In most cases, the evidence that HMRC look for will have been gathered by a developer working 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 be submitted along with the outline planning application. Where there is potential contamination then the developer has to carry out additional investigations. These investigations will typically include a site reconnaissance and exploratory investigation.

HMRC 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 accept evidence of the type that is used in a desk study: It is the claimant's responsibility to ensure that they have sufficient evidence to establish their claim.

CIRD61265 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 ensure that the desk study is for the correct site, the report will contain a six figure National Grid Reference to precisely identify the site.

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; and
- 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 says 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 (prepared by the Department of the Environment) which provide information on the processes, the materials and the waste leading to contamination of the land. The information identifies what is 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 industrial use of the site

then HMRC accept that the contamination arose from that industrial activity.

CIRD61275 Evidence for industrial activity: examples

This section sets out some examples of how HMRC 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 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 accept that the contamination in this case is from industrial activity.

Example

B Ltd is carrying out repairs on its premises. It discovers the presence of chemical contamination. It establishes that it does not arise naturally in 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 accept that the contamination in this case is from industrial activity.

Example:

C Ltd 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 underlying rock, not as a result of industrial activity. C Ltd cannot claim Land Remediation Relief.

Example:

D Ltd 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, D Ltd 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 varies according to the land use.

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.

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.

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 in a dangerous state 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 policy aim is to bring such land back into productive use.

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

This part of the 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. HMRC accept the underlying basis that the level of risk will vary according to the land use is also appropriate to Land Remediation Relief.

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. The Scottish Executive has published Planning Advice Note PAN33, Development of Contaminated Land. And the Welsh Local Government Association, Welsh Assembly and Environment Agency have jointly produced a publication “Land Contamination: a guide for developers”.

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

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

The planning 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 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:

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.

After the work is completed, but 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 still claim Land Remediation Relief on the costs of the capping layer because, at the time the work was carried out, it was considered that there was a serious possibility of relevant harm. The later re-categorisation of the risk does not deny A Ltd relief for the work undertaken consequent upon the earlier timeous study.

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 CIRD61335). 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 which shows 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 is below the soil guideline value, then the likelihood that it may pose a significant risk to human health can effectively be dismissed.

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. If the level of contamination exceeds the soil guideline values on this basis, then the land is in a contaminated state for the purposes of Land Remediation Relief.

However, it does not necessarily follow that such land would be considered to meet the definitions used under PPS23 (see CIRD61320) or under environmental protection legislation.

Other similar measures:

Soil guideline values are currently only provided for a limited range of contaminants. As a result, non governmental organisations have produced similar values for other contaminants.

Where these values have been prepared using the same underlying model as soil guideline values, HMRC regard them as evidence that supports a claim for Land Remediation Relief, if the planning authority requires the level of

contamination highlighted by the measure to be addressed as part of the remediation strategy as a condition for the development taking place.

CIRD61400 Natural contaminants

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

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

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 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
CIRD61490	Other natural contaminants

CIRD61405 Arsenic:

CTA09/S1145 (3) & SI09/2037/REG3

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) & SI09/2037/REG3

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. Radon is dangerous because it gives off alpha rays. Alpha rays are particularly damaging if the Radon is inhaled. Although often associated with the West Country, Radon 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 is needed.

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. Because 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. See below CIRD61505 for more information on membrane and cover systems.

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

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. If the expenditure is capital expenditure then A Ltd has to consider whether any of the expenditure qualified for capital allowances. Expenditure that qualifies for Capital Allowances does not attract LRR.

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.

For guidance on integral features see the Capital Allowances manual at CA22300 onwards.

CIRD61430 Japanese Knotweed: Expenditure from 1 April 2009

CTA09/S1145 (3) & SI09/2037/REG3

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 living organism exclusion (CIRD61400) nor the contamination caused other than by industrial activity exclusion (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

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

SI09/2037/REG7

One way that Japanese knotweed has spread is by regeneration from small pieces of rhizome 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. Japanese Knotweed is unique in this regard.

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 is found that Japanese knotweed has spread onto the site 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, and acted promptly once it became aware of the problem so cannot be said to have contributed to the spread of the infestation through neglecting to act within a reasonable time (see CIRD61440).

CIRD61440 Japanese knotweed – allowing it to spread

FA01/Sch22/Para12 (4)

CTA09/S1150 (1)

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 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 approach this issue, see CIRD61445

CIRD61445 Japanese knotweed – allowing it to spread: Examples

This section 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 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. D Ltd had been unaware that the plant was Japanese knotweed. There is no indication of how long the knotweed 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. The specialist advises 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 the knotweed was identified.

CIRD61450 Japanese Knotweed – Qualifying methods

SI09/2037/REG4

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

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 (often called “dig and dump” – see CIRD61515) 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

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

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

Example

B Ltd 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. B Ltd 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.

For work carried out on or after 1 April 2009 there is no requirement that the Japanese knotweed has to be present when the site was acquired.

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 B Ltd can therefore claim Land Remediation Relief.

CIRD61490 Other natural contaminants

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

CTA/S1145

The legislation does not work by analogy. Only those contaminants specified in the secondary legislation qualify for Land Remediation Relief.

The only plant qualifying for relief is Japanese knotweed.

Example

A Ltd is re-developing a site that is infested by Himalayan balsam.

A Ltd cannot claim Land Remediation Relief for the expenditure on clearing Himalayan balsam as this is a living organism and so is excluded from the relief by CTA/S1145. Unlike Japanese knotweed it has not been bought within the scope of Land Remediation Relief by secondary legislation.

Other plants, such as Australian Swamp Stonecrop, Floating Pennywort, Giant Hogweed, Parrot's Feather and Ragwort do not qualify for Land Remediation Relief for the same reason.

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 (a process known as “dig and dump”).

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. For commercial reasons, a company may choose to restore the land to a higher standard than is required by the appropriate planning regulations etc. In such event, the relevant contaminated land remediation includes restoring 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
CIRD61540	Ground Gases
CIRD61590	Excluded methods of remediation
CIRD61595	Abortive methods of remediation

CIRD61501 Preventing, minimising, remedying or mitigating:

CTA/S1146

A very wide range of measures are used to address the problem of land in a contaminated state. This is not a static arena, as the technology is changing. This section sets out some of the types of work that can attract Land Remediation Relief.

Terms that are often used in dealing with land in a contaminated state are:

- The source – the source of contamination
- The exposure pathway – how the contamination moves
- The receptors – who or what is affected by the 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. Identify the practical remediation options
2. Decide which of the options is best suited to the case
3. Plan the remediation process, which may involve combining a number of the options

This section sets out some of the types of work that can qualify for Land Remediation Relief. Please note that this list is not exhaustive and that there are many other methods that qualify for relief; and new methods are developing and coming on the scene.

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 heavy 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. The cap acts a barrier protecting future home owners from the contamination beneath. As a result what is called 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 isolates the contamination by putting a physical 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. This prevents 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:

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 up the waste and dispose of it in landfill.

A Ltd can claim Land Remediation Relief as the dig and dump of material containing asbestos has not been excluded.

As a developer, A Ltd will be able to claim a deduction for the payments of Landfill Tax under the normal rules for computing its trading profits. However A Ltd cannot claim Land Remediation Relief on the payments of Landfill Tax (see CIRD63110) as these are specifically excluded from the relief.

CIRD61520 Methods of remediation: Biological treatment

Biological treatment can take place:

- in situ, or
- the material can be excavated and treated on site, or
- the material can be excavated and 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. Biological treatment is a developing area.

Example:

A Ltd acquire a redundant petrol station from an unconnected party. There has been contamination by leaking fuel. A Ltd 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.

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:

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

CTA09/S1146 (3)

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 to avoid corrosion

Land Remediation Relief is not available where the contamination comes from natural sources, such as the underlying rock strata. Such contamination is not included in the list of exceptions at CIRD61400.

The purpose of the higher grade of cement is to prevent or mitigate the possibility of relevant harm. Where the contamination is the result of industrial activity, Land Remediation Relief is available for the **additional** cost (see CIRD63100) arising from using a higher grade of cement or concrete.

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.

CIRD61535 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. Furthermore the disturbed state of the ground arises from the actions of the claimant.

CIRD61540 Ground Gases

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

A number of gases that 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 or their waste products, 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 CIRD61400.

Expenditure on preventing build up of gases from activities carried on in the building are excluded under the polluter pays principle, see for example CIRD60165

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 CIRD61420

CIRD61590 Excluded methods of remediation

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

CTA/S1146

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.

It is for the company to decide on an appropriate method of remediation, based upon guidance from the planning authorities or appropriate regulatory body.

At present, on the basis on the available evidence, only methods of remediation involving the removal of Japanese knotweed to landfill have been excluded.

It is recognised that technologies and practices in the area of land remediation are progressing rapidly. Over time it will be appropriate for other methods of remediation to be excluded from the scope of the relief, as more sustainable methods of remediation are developed.

If readers feel that additional forms of remediation should be excluded from relief because there are now more sustainable alternative forms of remediation available for particular forms of contamination, then they should write to HM Treasury setting out the method of remediation that they consider should be excluded and providing supporting evidence, such as details of what are considered to be the alternative more sustainable methods of remediation.

CIRD61595 Abortive methods of remediation

CTA09/S1146

If a company carries out an options appraisal and decides on a remediation strategy that subsequently proves unsuccessful, then Land Remediation Relief is still available on the expenditure incurred.

Example:

Following an appraisal of the options, F Ltd decides to install a new type of in ground barrier to contain contamination. The validation process shows that the method is not entirely successful and, following further advice, F Ltd decides to replace the barrier with one of a different type. F Ltd is successful in recovering 80% of the cost of the failed system from advisors and contractors.

F Ltd can claim Land Remediation Relief on the 20% of the costs of the abortive expenditure. It cannot claim on the remaining 80% of the cost that was reimbursed.

F Ltd will be able to claim Land Remediation Relief on the replacement barrier.

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 derelict land - examples
CIRD62010	What is long term derelict land?
CIRD62015	Land must be derelict at acquisition
CIRD62020	English National Land Use Database
CIRD62025	Scottish Vacant and Derelict Land Survey
CIRD62030	Evidence for dereliction
CIRD62035	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.

Temporary use:

Land that is in a productive state does not qualify for Land Remediation Relief.

This does not mean that the land must not have been used at all. Where the use is very limited, less than seven days a year, and the income generated is not substantial, then it can be ignored as too insignificant to affect the status of the land as derelict.

CIRD62005: What is derelict land – examples

The following are examples of how the guidance at CIRD62001 would be applied.

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. A Ltd 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.

Had the site only been used for two or three days a year, for example as an overflow car park when there is a special event on, then it would not be seen as in productive use

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.

Example – film set

The site of a former warehouse has been derelict for many years. Its only use has been for a few days as a film set. A Ltd 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.

The land has only seen a very limited use, so Land Remediation Relief will be available, providing that the payment received was not a significant sum.

If the site was used it on a number of occasions in the year, then the site would be in productive use and would not qualify for the relief.

CIRD62010: 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.

Evidence:

The following sections look at the type of evidence that shows that land is long term derelict land for the purposes of Land Remediation Relief:

CIRD62020	English National Land Use Database
CIRD62025	Scottish Vacant and Derelict Land Survey
CIRD62030	Evidence for dereliction

CIRD62015: 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.

Evidence:

The following sections look at the type of evidence that shows that land was derelict land at the times of acquisition:

CIRD62020	English National Land Use Database
CIRD62025	Scottish Vacant and Derelict Land Survey
CIRD62030	Evidence for dereliction

CIRD62020: English National Land Use Database

The National Land Use Database (NLUD) classifies land use in England. HMRC will accept the NLUD as evidence as to whether land is derelict.

Land in England does not need to be on the NLUD to qualify. For the guidance on evidence where the land is not in a land use database see CIRD62025

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 inclusion, on the NLUD meeting this definition, is evidence that the land is derelict for the purposes of Land Remediation Relief at that time.

Example:

A Ltd 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.

CIRD62025: 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. HMRC accept the Scottish Vacant and Derelict Land Survey as evidence as to whether land is derelict.

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 CIRD62025

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

CIRD62030: Evidence for dereliction

CTA09/S1145A

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

This section is purely illustrative and what is acceptable evidence is not restricted to the evidence set out in this section.

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.

There may also be articles in the local media about the sale of the property.

Derelict since 1998:

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

There may be articles in the local media about the site. These may relate to the closure of the previous businesses on the site, or about how the site has lain derelict since a particular business closed.

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

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

Evidence includes 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.

CIRD62035: Qualifying Works

CTA09/S1146A & SI09/2037/REG6

To qualify for relief, the expenditure must be on relevant preparatory work (see CIRD63215) or on works set out in secondary legislation.

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

- **Removal of post tensioned concrete heavyweight construction;**
- **Removal of building foundations and machinery bases;**
- **Removal of reinforced concrete pilecaps;**
- **Removal of reinforced concrete basements; or**
- **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, which combine piles into groups. The purpose of the pilecap is to transmit 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, drainage, 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).

It is important to keep in mind when looking at the following guidance, when was the expenditure incurred?

For further information see:

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 all of 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 or materials, or is qualifying expenditure on sub-contracted land remediation
- would not have been incurred had the land not been in a contaminated state, and
- is not subsidised.

For further information see:

CIRD69005	Employee costs
CIRD69020	Materials
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:

CIRD69020	Materials
CIRD63225	Professional fees
CIRD69030	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 is incurred **only** because the land is in a contaminated or derelict state.

The condition that expenditure is incurred **only** because the land is in a contaminated state is 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.

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

CIRD63101	Expenditure incurred because of contamination or dereliction - Examples
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
CIRD63270	Preliminaries

CIRD63101 Expenditure incurred because of contamination or dereliction – Examples

This section provides examples of how the guidance at CIRD63100 applies.

Example:

A Ltd purchases land that is contaminated with oil that has leaked from storage tanks.

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

B Ltd excavates the soil, takes it away and subjects it to a process of bioremediation. At the end of the process B Ltd replaces the soil.

A Ltd removes and fills in the storage tanks.

The payment made by A Ltd to B Ltd qualifies because the whole of the work carried out by B Ltd is for the purpose of relevant land remediation. The work is done only because the soil is contaminated.

A Ltd cannot claim Land Remediation Relief for land in a contaminated state on the cost of removing the storage tanks and infilling. This is not a cost of removing the contamination. If the tanks are removed on or after 1 April 2009 relief may be available under Land Remediation Relief for long term derelict land, see CIRD62000 onwards.

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. So there is no **additional** cost caused only by the remediation. 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.

Example:

D Ltd is re-developing a brown-field site as a residential estate. There are contaminants in the soil and D Ltd imports topsoil to create a 1200mm capping layer over the contamination, double the depth that D Ltd normally uses to create amenity areas.

In this example, rather than using a membrane D Ltd has created a barrier using a greater depth of topsoil. Whilst this will still qualify for Land Remediation Relief, D Ltd cannot claim the whole cost of importing the top-soil. D Ltd would have imported topsoil to create a layer 600mm deep to improve the amenity value and provide a growing medium for garden plants and vegetables, whether or not the site was contaminated. D Ltd can claim the cost of the **additional** 600mm as that expenditure was only incurred because the land is in a contaminated state.

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)

For periods up to 1 December 2008, there was an exemption from Landfill Tax for contaminated waste. Most waste from work qualifying for Land Remediation Relief will have been exempt from Landfill Tax.

For periods up to 1 December 2008, if Landfill Tax is payable then it is reasonable to question whether the work qualifies for Land Remediation Relief.

From 1 December 2008 the contaminated land exemption is being phased out.

Expenditure incurred on or after 1 April 2009.

The payment of Landfill Tax is not qualifying expenditure for the purposes of Land Remediation Relief.

This means that:

- it is not possible to elect to treat a payment of Landfill Tax as capital expenditure and
- it is not possible to claim for a payment of Landfill Tax to be treated as an enhanced deduction .

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. The block contains asbestos insulation material in a dangerous condition. It disposes of asbestos waste at a landfill site.

D Ltd can claim Land Remediation Relief on the **additional** 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) & SI09/2037/REG5

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:

Work carried out under a statutory obligation imposed by legislation listed in a Treasury Order does not qualify for Land Remediation Relief

Work carried out under a statutory obligation not listed in a Treasury order qualifies for Land Remediation Relief if all other conditions are satisfied.

Where the obligation only arises once a notice has been issued, the exclusion **only** applies where such a notice has been served. Expenditure on any work carried out before such a notice is issued, qualifies for the relief, subject to meeting the other conditions.

The legislation on issues such as planning varies across the UK. The policy underlying Land Remediation Relief is that expenditure on work carried out under equivalent obligations imposed anywhere in England, Scotland, Wales or Northern Ireland will be 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; or
- article 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:

- section 77 and section 79 of the Building Act 1984;
- article 66 Pollution Control and Local Government (Northern Ireland) Order 1978 (No. 1049 (N.I. 19)); or
- 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; or
- 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

Expenditure that is covered by a grant or subsidy does not qualify for relief. If the grant or subsidy only covers part of the expenditure, the balance qualifies for relief provided it meets all the other conditions.

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

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

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

Example

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

B Ltd'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). B Ltd can 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

A Ltd 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 B Ltd, an unconnected party.

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

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

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

Example

A Ltd 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, A Ltd discovers that waste containing asbestos has been buried on the site and spends £100,000 on removing the asbestos.

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

A Ltd can only claim Land Remediation Relief on £50,000 of the total expenditure of £100,000 as the other £50,000 has been met by Surveyor B.

Example

A Ltd 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, A Ltd discovers that waste containing asbestos has been buried on the site and spends £100,000 on removing the asbestos.

A Ltd seeks compensation from Surveyor B. The negotiations are continuing when the accounts are prepared. Based on the position at

the time the accounts are signed off, A Ltd deducts £75,000. A Ltd submits its return claiming LRR on £75,000. Subsequently A Ltd accepts an offer in settlement of £50,000.

A Ltd's initial claim for LRR on £75,000 reflects the position at the time the claim was made, however the circumstances changed. This means that the claim has become excessive as following the agreement with Surveyor B, a further £25,000 has been met by Surveyor B.

A Ltd must revise its claim down so that it claims LRR on £50,000 instead of on £75,000.

The deduction in the accounts for £75,000 is unaffected as it reflects the position at the time the accounts were approved. The £25,000 received from Surveyor B will be reflected in the accounts for a later period.

If within the time limit for amending the return for the year of claim, A Ltd should submit an amended self-assessment. Otherwise HMRC can make a discovery assessment as the claim has become excessive.

CIRD63140 Subsidised expenditure – Contractors

FA01/SCH22/PARA8

CTA09/S1144

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. The question is who has actually paid for the work? A contractor is paid for carrying out the land remediation. As the costs are ultimately incurred by the principal, the contractor cannot claim Land Remediation Relief.

Private Finance Initiative

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 does not qualify for Land Remediation Relief.

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 such 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:

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

As a result additional costs may be incurred in containing the asbestos and dust 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 is solely incurred because the land is 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. The **additional** cost of transporting the material to the other site also qualifies.

Example:

A Ltd is re-developing a building. As part of the renovations, it removes asbestos panelling. The local landfill site does not accept this material. 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 activities** 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.

Preparatory activities are not the same as the type of work sometimes referred to as preliminaries. For guidance on preliminaries see CIRD63270

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, contamination is thought to be on the site, then the costs of further work to establish the level of contamination together with the cost of the risk assessment is 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 approach the question of what are preparatory activities for the purposes of Land Remediation Relief. You should read the guidance on preparatory activities in CIRD63215 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. The desk study highlighted the possibility of redundant services and foundations from previous use. 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 redundant services and remaining foundations as qualifying land remediation expenditure. B 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 derelict.

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 of removal and may qualify for Land Remediation Relief.

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

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

CTA09/S1144 (5)(c)

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

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

CTA09/S1175

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 conditions are:

- 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; and
- The sub-contractor must recognise the payment in its profit and loss account, in accordance with normal accounting practice; and
- 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; and
- 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 to 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 or materials;
- not of a capital nature; and
- not subsidised.

Example

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

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

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

This section applies to expenditure incurred 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 dangerous 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.

For the purposes of Land Remediation Relief, A Ltd incurs the £20,000 in its accounting period ended 31 December 2007. Therefore A Ltd claims Land Remediation Relief in the accounting period ended 31 December 2007

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

This section applies to expenditure incurred 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

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

A Ltd cannot claim Land Remediation Relief in respect of the payment made by B Ltd to C Ltd. B Ltd cannot have relief because they are a subcontractor and it is A Ltd that bears the costs, see CIRD63140.

Had A Ltd engaged the services of the specialist firm, C Ltd, itself then it would have qualified for Land Remediation Relief.

CIRD63265 Verification

The local planning authority may also require, as a condition of granting planning permission, that 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.

CIRD63270 Preliminaries

FA01/Sch22/Para2 (5)

CTA09/S1144

Companies involved in developing land will incur expenditure described as “preliminaries” or “global costs”. These are costs that are not particular to a particular part of the project. The types of expenditure which may be included under this heading include site services, security, temporary works, or safety measures.

Preliminaries will be incurred whether or not the site is contaminated. A simple apportionment of preliminaries is therefore not appropriate as these costs would have arisen whether or not the site was affected by contamination.

Land Remediation Relief will only be available if the amount of expenditure on preliminaries is increased specifically because the land is in a contaminated state. In this situation only the **additional cost** qualifies for Land Remediation Relief.

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 land in a contaminated state 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	Tax credit - Restriction of losses carried forward
CIRD68025	Amount of tax credit
CIRD68030	Tax credit - Claims
CIRD68035	Tax credit – Amended claims
CIRD68040	Tax credit - Set off against corporation tax
CIRD68045	Tax credit - Arrears of PAYE or NI
CIRD68050	Tax credit - Interest
CIRD68055	Tax credit - Enquiries into returns
CIRD68060	Tax credit – changes in qualifying land remediation loss
CIRD68065	Tax credit - Recovery
CIRD68070	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 land in a contaminated state 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:

A Ltd 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 A Ltd claims land remediation relief of £25,000 in respect of the expenditure.

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

A Ltd 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%).
- A Ltd's unrelieved trading loss for the accounting period is £70,000 (£80,000 less £10,000).
- A Ltd'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 A Ltd 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

FA01/SCH22/PARA17
CTA09/S1158

Amount of loss carried forward

The company's trading loss, or property business 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).

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.

Example

A Ltd 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 ($£50,000 \times 16\% = £8,000$ - see CIRD68015).

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

CIRD68025 – Tax credit - 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 – Tax credit - Claims

FA98/Sch18/Para83H

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.

The time limit for the claim is the first anniversary of the filing date for the relevant company tax return.

Content of claim

FA98/Sch18/Para83I

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

Example

A Ltd 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.

A Ltd receives a tax credit of £1600 ($£10,000 \times 16\%$).

Late claims

The company may make a claim 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 the general one that HMRC adopt.

Before deciding whether the late claim should be admitted a detailed examination of all the facts should be made. If the Area Office's view is that the late claim should not be admitted then the case should be referred to CT&VAT (Technical), together with all relevant papers, using the template found by clicking the Technical Help button in the left bar of the Manual.

CIRD68035 Tax credit - Amended claims

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 amending, or withdrawing the claim is the same as for making the claim. It 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 the general one that HMRC adopt.

Before deciding whether the late claim should be admitted a detailed examination of all the facts should be made. If the Area Office's view is that the late claim should not be admitted then the case should be referred to CT&VAT (Technical), together with all relevant papers, using the template found by clicking the Technical Help button in the left bar of the Manual.

CIRD68040 - 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.

CIRD68045 - 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.

CIRD68050 Tax credit - 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.

CIRD68055 Tax credit - 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.

CIRD68060 Tax credit – changes in qualifying land remediation loss

FA07/Sch24/Para3

Circumstances may mean that the amount of the qualifying land remediation loss changes after a claim for a tax credit has been made. For example if additional compensation is received (see CIRD63135).

If a change in circumstances means that a claim for a Land Remediation tax credit has become excessive then the Company **must** notify HMRC.

If it is still within the time limit, then the Company should submit an amended return.

If the Company does not submit an amended return or if the enquiry window is coming to a close then the Officer of HMRC should open an enquiry into the return.

For guidance on making a discovery assessment to recover an excessive tax credit, see CIRD68065

CIRD68065 - Tax credit: recovery of tax credit

FA98/Sch18/Para41

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.

CIRD68070 - 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	Materials
CIRD69025	Person with a relevant connection to the company
CIRD69030	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 for Land Remediation purposes.

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.

Under the Interpretation Act 1978, “land” includes the 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.

Under the Interpretation Act 1978, “land” includes the buildings on the land.

CIRD69020 Definition: Materials

FA01/Sch22/Para2 (4) & FA01/Sch22/Para6
CTA09/S1144 (5) & CTA09/S1172

To be qualifying land remediation expenditure, the materials have to be used directly in the remediation work. For example the chemicals used to treat Japanese knotweed or the cement used to create an in ground barrier (see CIRD61065).

The cost of materials does not include the hire of plant or equipment. The cost of hiring plant with an operator is subcontract expenditure; see the guidance at CIRD63235 onwards.

CIRD69025 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; or
- 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.

CIRD69030 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; and
- 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; and
- 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.