



## **Financial Incentives for Brownfield Land**

**North West Brownfield Regeneration Forum**

**10<sup>th</sup> February 2009**

## “Cash is King!”

- Basic economic principle: reduce cost & increase income
- Four areas to focus on:
  - **Focus on Cost:** optimising the time / cost equation when designing the remediation strategy
  - **Land Remediation Relief:** Creating cash flow from the tax relief.
  - **Grants:** Being aware of potential sources of grants to gap fund projects
  - **Public / Private Sector Partnering:** share in the risks and rewards of the scheme

## **Land Remediation Relief – Current Regime**

## Current Regime

### Key Drivers

- 150% tax relief – Government’s chosen incentive method:
  - **“To provide assistance to land that would otherwise not come back into use”**
- Tax is not a primary driver of behaviour – at best it rewards “good” behaviours / reinforces government policy
- It could be viewed as a “grant” or “subsidy” from the Treasury
- It reduces the amount of tax paid
- Creates an undiscounted cash benefit of 14%
- When do you get the money?

Current Regime

## Example 1: Trader: Taxation of Gains with no tax relief

	Dec-08	Dec-09	Dec-10	Dec-11	Total
Cost	£1,300	£600	£100		£2,000
Qualifying Expenditure	£0	£0			£0
Total	£1,300	£600	£100		£2,000
Sales %age achieved			30%	70%	
Sales Revenue			£750	£1,750	£2,500
<u>less</u> : Cost of sales			£600	£1,400	£2,000
Profit before tax			£150	£350	£500
Corporation Tax @ 28%			£42	£98	<b>£140</b>
Profit after tax			£108	£252	£360

Current Regime

## Example 2: Trader: Taxation of Gains with LRR

	Dec-08	Dec-09	Dec-10	Dec-11	Total
Cost	£1,000	£500	£100	£100	£1,600
Qualifying LRR expenditure	£300	£100			£400
Total	£1,300	£600	£100		£2,000
Sales %age achieved			30%	70%	
Sales			£750	£1,750	£2,500
less: Cost of sales			£600	£1,400	£2,000
Profit before tax			£150	£350	£500
less: Land Remediation Relief			£60	£140	£200
Taxable Profit			£90	£210	£300
Corporation Tax @ 28%			£25	£59	<b>£84</b>
Profit after tax			£125	£291	£416

**LRR cash benefit = £140 - £84 = £56**  
**= 14% of £400**

## Current Regime

# ■ Land Remediation Relief – Surrendering losses

## Claiming the tax credit

- Current year losses can be surrendered if created by LRR expenditure
- HMRC will pay 16% for any losses surrendered
- 16% now or 28% if carried forward
- Need to consider prospect of making taxable profits in the foreseeable future.

## Current Regime

### ■ Land Remediation Relief – Entitlement

#### Who can claim?

- ❑ Must be a company subject to Corporation Tax
- ❑ Housebuilders
- ❑ Commercial Developers
- ❑ Property Investors
- ❑ Owner Occupiers
- ❑ Contractors.....?
- ❑ PFI Companies.....?

## Current Regime

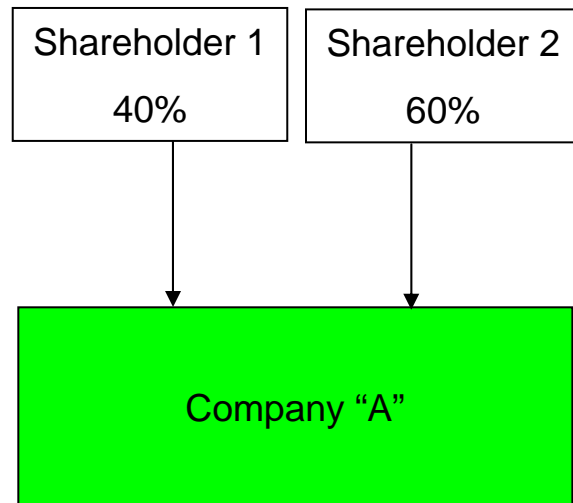
### ■ Land Remediation Relief – Entitlement

#### Who can't claim?

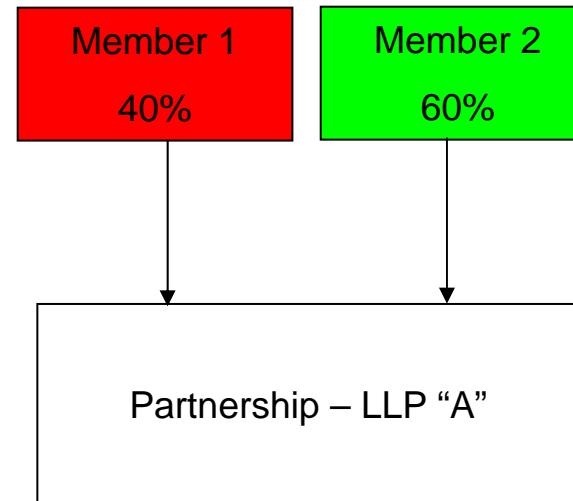
- ❑ Polluters
- ❑ Non-tax payers - public bodies / charities
- ❑ Private individuals
- ❑ Off shore companies
- ❑ Partnerships

Current Regime

## ■ Land Remediation Relief – Entitlement



Entitlement conditions  
assessed on Company A



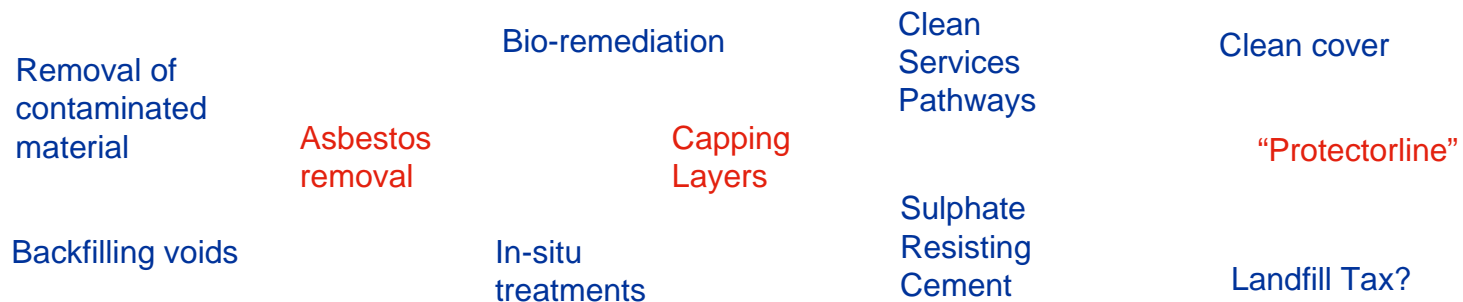
Entitlement conditions  
assessed on Members of LLP

Current Regime

## ■ Land Remediation Relief – Eligibility

What can be claimed?

- ❑ Expenditure that would not have been incurred if the land was not contaminated
- ❑ Expenditure must be on “relevant remediation” i.e. payment for the removal of “substances” that cause “harm” to humans, controlled waters or damage property
- ❑ Land definition includes buildings and contaminants within them



## **Land Remediation Relief – Post 1 April 2009**

## The New Legislation

1. Change of view on Japanese Knot Weed
  - **Opportunity for retrospective claims**
  - **General time limits – FA 1998 Sch 18 Part VII s.55**
    - **6 years for trading stock and repairs**
    - **2 years for capital**
    - **2 years for tax credit unless agreed with HMRC**
  - **Impact??**

## The New Legislation

### 2. LRR extended in scope on qualifying Derelict Land

- **A broader range of costs allowed on qualifying derelict sites**
  - **Removal of post tensioned concrete constructions**
  - **Removal of foundations and machinery bases**
  - **Removal of reinforced concrete pile caps**
  - **Removal / capping off redundant services**
  - **Prelims and Fees**
  - **Relevant Preparatory activities**

## The New Legislation

2. LRR extended in scope on qualifying Derelict Land
  - ***“Land or Buildings so damaged by previous development that it is incapable of beneficial use without treatment”***
  - **Must be Long Term Derelict – since 31 March 1998**
  - **Evidenced from listing on NLUD**
  - **“Polluter Pays” principle to be adopted**

## The New Legislation

3. Natural substances are not contaminating substances
  - **Water and air are now specifically excluded**
  - **Water / air borne substances are ok**
  - **Arsenic / radon / JKW also unaffected**
  - **Impact??**
    - **Flood claims**
    - **Mine Shaft grouting and capping**

## The New Legislation

4. Major interest in land required
  - **Freehold or lease over 7 years**
  - **Licence to Occupy no longer good enough**
  - **Impact??**
    - **PFI contracts**
    - **Contractors**
    - **Partnering arrangements**

## The New Legislation

### 5. No LRR on Landfill Tax

- **To be consistent with move away from landfill**
- **Asbestos / Coal tars / others??**
- **Impact??**
  - **Blatant tax on development!**
  - **Extra layer of research required – proof of LFTE**

## The New Legislation

### 6. More anti-avoidance for Polluters

- **No relief for company where the polluter retains a “relevant interest”**
- **Relevant interest -**
  - **Any interest in, right over or licence to occupy the land including options**
  - **A reduction in the purchase price**  
..... to anything other than the OMV
- **Impact??**
  - **JVs / Partnering with a polluter**
  - **Any sites purchased from a polluter where polluter retains an interest;**

## The New Legislation

### 7. Just removal costs allowed

- **No relief for “restoring the land and waters to their former state” or for consequential costs**
- **Backfilling voids / additional substructure costs potentially caught**
- **Impact??**
  - **Historic claims would be reduced by up to 25%**
  - **What works are included in the “remediation” strategy**

## The New Legislation

8. Works required under Statutory Order NQ
  - **Amenity of neighbourhood**
  - **Defective premises / dangerous buildings**
  - **Abatement of a nuisance**
  - **Work under a repairs notice of a listed building**
  - **Impact??**
    - **Notice required**

# Grant Funding

## Contaminated Land Programme

### **Local Authorities can bid for capital funding to perform intrusive site investigations and site remediation**

**The first window for project spend in the 09 - 10 financial year closed on January 16<sup>th</sup> 2009**

**There will be a second window in May/ June 2009 to allocate remaining funds which must also be spent within the 09-10 financial year**

**In November 2009 the window will open for applications for spend in the 10- 11 financial year and is likely to run similarly to the previous rounds.**

- Projects are assessed & prioritised according to risks posed to human health and environment. (prioritisation tool & guidance available)
- LAs will be asked to provide more robust final reports that in the past for more accurate monitoring.
- Processes & forms have been simplified

## Land Remediation Scheme

**No set funding- it is a mechanism that can be used to contribute towards 100% of the cost of bringing previously developed land back into use and remove contamination & pollution**

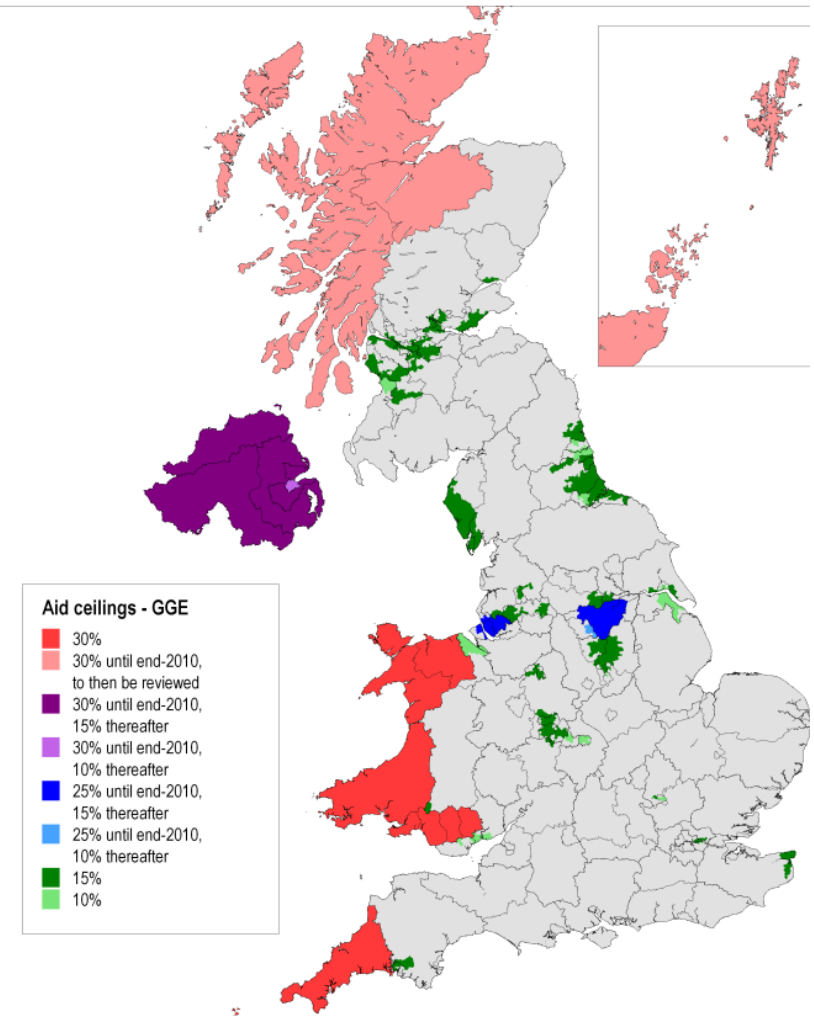
- **Eligible costs:** Site investigations, remediation, decontamination, stabilisation, demolition works, asbestos removal, professional fees, reasonable developers profit, financing costs, non recoverable VAT, contingency
- RDAs, English Partnerships, Urban Regeneration Companies, Local Authorities can use the LRS mechanisms to fund remediation
- No dedicated funds: they may come from Single pot RDA or EU allocated funds for example
- Unclear to what extent the mechanism is actually used - possible preference for using gap funding model, with lower levels of aid and clearer appraisal and delivery processes

**Dedicated pots for Wales & Scotland- is that the way forward England**

## Gap funding

- Available within specific ‘assisted areas’
- RDAs award for office, industrial leisure & mixed use schemes
- Awarding bodies set up their own programmes according to their needs, priorities & budget
- Projects must meet the awarding bodies’ strategic aims and be aligned with the RES

Assisted Areas in Great Britain, 2007-2013  
Aid ceilings, expressed as Gross Grant Equivalents (GGE)



## Housing gap funding

- Where housing schemes are not commercially viable, will bridge the gap where the costs of development exceed the end value
- European-Commission-approved investment tool- no dedicated funding
- Available anywhere in England: could be low demand areas to encourage demand or high demand areas to enable affordable housing provision
- HCA (mostly), RDAs, Local Authorities, URCs are the awarding bodies
- Grant cannot be more than 60% of project costs
- Individual awarding bodies decide on the focus and allocation of funding
- Projects must align with the Sustainable Communities Plan, the Regional Housing Strategy and local housing strategies.

## A Potential Conflict.....

**Tax incentives for development  
of brownfield land:  
a consultation**

March 2007

 HM TREASURY

## Can the two co-exist?



**NATIONAL  
BROWNFIELD  
STRATEGY**

**GAP Funding**



## Planning Pointers

- Retrospective Claims - Opportunity to generate cash
- Review land holding for tax relief / grant opportunities
- Factor tax relief potential into investment appraisals and cost plans
- Be aware of tax relief potential when dealing with contaminated and derelict sites – especially if public sector led!
- Consider the tax relief implications when structuring grant terms and conditions.
- Guidance Notes due to be published end of Feb.