

Abatement, overpayment and repayment

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Topics

- Abatement
 - Reg. 74A – Abatement: section 73 applications
 - Reg. 74B – Abatement: implementation of a different planning permission
- Overpayment
 - Reg. 75 - Overpayment
- Repayment (including clawback)

Abatement – Reg. 74A: section 73 applications

Reg. 74A – Abatement: section 73 applications

- Three requirements:
 - CIL has been paid in respect of a chargeable development;
 - A new planning permission is later granted in relation to that development under s. 73 TCPA 1990; and
 - The CA has issue a new or revised liability notice in respect of that development because the chargeable amount has changed.

- If satisfied: a person liable to pay CIL for that CD may request that the CA credits the CIL already paid against the amount due under the new or revised liability notice.

- Request must be accompanied by proof of the amount of CIL already paid.

- CA must grant any valid request.

Abatement – Reg. 74B: implementation of a different planning permission

Reg. 74B: Abatement: different planning permission

- **Three preliminary requirements:**
 - CD commenced under planning permission A
 - Planning permission B granted for development on all or part of the land on which the CD under PPA is authorised to be carried out; and
 - CA receives notice from a person who has assumed liability to pay CIL in relation to PPB that: (1) CD under PPA will cease to be carried out; and (2) CD under PPB will commence.
- If satisfied: person who has assumed liability to pay CIL in relation to PPB may request that the CA credits any CIL paid in relation to PPA against the amount due in relation to PPB.

Reg. 74B: Abatement: different planning permission

- **The request:**
 - CA must grant valid request:
 - must be made before CD under PPB is commenced; and
 - must be accompanied by proof of amount of CIL already paid.

Reg. 74B: Abatement: different planning permission

- **The exceptions** – must grant subject to:
 - (5) PPB must not be granted pursuant to s. 73 TCPA 1990
 - (6) CIL paid under PPA can only be credited against CIL due for PPB to the extent that the CIL paid in relation to PPA relates to buildings (“relevant buildings”) that:
 - Have not been completed when the request is made; and
 - Are not taken into account in reducing CA in relation to PPA via reg. 40.
 - (7) If PPB is a phased PP and credit against PPB is greater than amount due for PPB phase 1 (commenced after request granted), then balance of credit applied to next phase(s) of PPB.

Reg. 74B: Abatement: different planning permission

- The exceptions – must grant subject to:

(8) Where:

- Valid request made;
- Relevant building completed under PPA after request made (whether before/after CD under PPB commences); and
- Reduced amount of CIL paid in relation to PPB pursuant to grant of request

Then:

- Abatement recipient must pay to CA an amount equal to CIL paid in relation to relevant building which was credited against CIL due for PPB.
- Amount paid treated as CIL paid in relation to B.

Reg. 74B: Abatement: different planning permission

- (9) Where: request for abatement in respect of PPB granted within three years of grant of PPA then for purposes of calculation of CA for PPB:
- Any parts of buildings:
 - Demolished under PPA;
 - Taken into account pursuant to reg. 40 to reduce CA for PPA;
 - Would have been taken into account pursuant to reg. 40 to reduce CA for PPB but for demolition and
 - Not otherwise taken into account pursuant to reg. 40.
 - Are to be taken into account pursuant to reg. 40 for PPB as if they were parts of in-use buildings that are to be demolished before the completion of CD under PPB (or phase 1 of PPB)

Reg. 74B: Abatement: different planning permission

- **Other general matters:**
 - Abatement may be granted more than once in relation to a PP.
 - Difference between amount paid in relation to PPA and amount due in relation to PPB after any abatement under reg. 74B is not an overpayment within reg. 75
 - See PPG at [138] – [143].

Overpayment – Reg. 75

Reg. 75: Overpayment

- (1) Where a person (P) is liable to pay CIL and the amount paid by P proves to be greater than the amount for which P is liable, the collecting authority must, as soon as practicable, repay the overpayment.
- (2) But the collecting authority is not required to repay an overpayment where—
 - (a) it is satisfied that the amount of the overpayment is less than any reasonable administrative costs which it would incur in making the repayment; or
 - (b) the overpayment is a result of a land or infrastructure payment.

Reg. 75: Overpayment

- (3) Where a person is entitled to a repayment, the collecting authority must pay that person an additional amount by way of interest on the repayment at a rate which is the higher of—
- (a) 0.5% per annum; and
 - (b) a percentage per annum equal to the Bank of England base rate less one percentage point.
- (4) Paragraph (3) does not apply where—
- (a) the overpayment is as the result of an application made under section 73 of TCPA 1990; and
 - (b) the chargeable amount was calculated correctly in relation to that application and the chargeable development it was made in relation to.

Repayment

Other repayment generally

- PPG at [140]: “A refund is not payable under the abatement provisions if the later development scheme has a lower levy liability than the one which was first paid on the site. This is to avoid potentially significant and long-term financial liabilities to charging authorities on schemes which are not complete.”
- Other contexts: unjust enrichment or restitution against a taxing authority in the context of non-domestic rates.

Clawback

- Reg. 2 – “clawback period” –
 - Residential annexes & self-build housing – 3 years from date of compliance certificate
 - Social housing relief – 7 years from date on which qualifying dwelling first let
 - All other purposes – 7 years from day chargeable development commenced
- Reg. 42C – withdrawal of the exemption for residential annexes
- Reg. 48 – withdrawal of charitable relief
- Reg. 53 – withdrawal of social housing relief
- Reg. 54D – withdrawal of the exemption for self-build housing

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