

By George! The Complication of Tax Simplification?

LAND REMEDIATION
RELIEF HERE TO STAY

REAL ESTATE INVESTMENT
TRUSTS REGIME SIMPLIFIED

RESEARCH AND DEVELOPMENT
TAX RELIEF UP TO 225%
FOR SMES

MORE CERTAINTY FOR
CARBON PRICE

FLAT CONVERSION
ALLOWANCES ABOLISHED

ENHANCED CAPITAL
ALLOWANCES OR TARIFFS,
YOU CAN'T HAVE BOTH

FIXTURES GETS COMPLICATED!

ENTERPRISE ZONES —
FIRST YEAR ALLOWANCES
FOR INVESTMENT

Following last week's Autumn Statement, the results to a number of the tax consultations that ran over the summer were published on 6 December 2011. The proposals are contained within the draft Finance Bill 2012 and will have a far reaching impact on the U.K. property and construction industry and all professional advisers.

The major change concerned fixtures and following a formal consultation by HM Revenue & Customs (HMRC), it was proposed to fundamentally change the way capital allowances were claimed on buildings. The consultation closed on 31 August 2011 and the results of this, although less dramatic than expected, are now enclosed.

The main points affecting property expenditure, and likely to have an impact on clients and advisers are as follows:

Land remediation

- The draft Finance Bill 2012 does not now include any proposal to abolish land remediation tax relief and derelict land relief.
- The “Response to Consultation” document details that responses were received from a range of companies. On considering the replies, the Government decided that removing this relief, in conjunction with the already agreed removal of the exemption from landfill tax would risk undermining the Government’s plans to support the housing and construction sectors.
- This important tax relief will still be available for companies to claim when incurred on qualifying items.
- Historic expenditure can be reviewed up to four years for revenue expenditure and two years for capital expenditure.

Capital allowances — fixtures

The expected changes on mandatory pooling and record of agreement have not transpired as originally proposed, thus avoiding unreasonable time limits for property owners and occupiers, although the administration will increase.

The resulting fixtures rules included in the draft bill have instead focused on changes in ownership with direct capital expenditure incurred on original construction, refurbishment, fitting out and works of alteration seemingly outside the scope of mandatory pooling, until a change of ownership. Capital contributions are specifically excluded and a relaxation for fixtures previously covered by a business premises renovation allowances claim has been introduced. The proposals, therefore, mainly relate to property purchases.

The bill proposes a new clause (s187A) with the rules due to come into force from 1/6 April 2012. There are also some transitional rules which will apply for a further two years. Under the changes, a future owner acquiring a plant and machinery fixture will only be able to claim allowances where:

- The seller or any prior owner was not entitled to claim allowances (e.g., held by traders, pension funds or local authorities);
- Where the seller or prior owner has claimed allowances, a disposal value has been agreed and fixed with a s198 election;
- Where a tribunal has determined the apportionable sum, upon application by the buyer or seller within a two-year period; or
- Where a past owner who has permanently discontinued his business, disposes of a property and makes a written statement within two years.

In other cases the buyer’s entitlement will be nil. The draft legislation requires the buyer to prove to HMRC that the appropriate paperwork is in place.

Most second hand property transactions will be caught by this legislation and in future, the ability to claim allowances will be permanently lost, if a property has been, or was previously held by an owner who fails to pool expenditure or claim first year allowances. This is known as “the pooling requirement.” Even where this has occurred, “fixed value” and “disposal value statement” requirements, are necessary.

The rules around s198 and s199 elections will also be amended to reflect the changes in rules.

Land remediation relief and derelict land relief retained.

Enterprise zones

Despite an announcement in the March Budget and a hint in last week's Autumn Statement, the detail behind enterprise zones was only released as part of the draft legislation, providing a narrower than expected opportunity for tax relief.

Capital allowances will be provided by means of a 100 per cent first year allowance (FYA) invested in plant and machinery assets. As EU State Aid approval was required, the relief is aimed at boosting investment rather than operation and so there are a number of resulting restrictions:

- The FYA will only be available to companies within the charge to U.K. corporation tax, excluding unincorporated businesses.
- Assets which are leased are outside of the scope, including excluded leases of background plant or machinery within a building.
- The relief applies to investment in unused assets for a business of a kind not previously carried out by the company.
- FYAs are not available on "replacement expenditure" where the new assets perform the same, or a similar function. Where an asset is replaced and is capable of performing a significant additional function or enhances productivity, then the appropriate proportion of expenditure will qualify.

A cap of €125 million applies for plant and machinery eligible for FYAs for the company within an enterprise zone. Qualifying expenditure must be converted into Euros for the purposes of the cap.

The regime currently only extends to six enterprise zones: Black Country, Humber, Liverpool, North Eastern, Sheffield and Tees Valley.

Feed-in tariffs, renewable heat incentives and enhanced capital allowances

Largely as expected the proposals to restrict allowances where feed-in tariffs (FITs) and renewable heat incentives (RHI) are available have been set out within the draft legislation. A major change of plan is the ability to choose between tariffs and enhanced capital allowances (ECAs), rather than be restricted whether you received the income or not.

It also includes legislation making "solar panels" integral features and the main features of the changes are as follows:

- Receipt of FITs or the RHI will disqualify entitlement to ECAs for relevant plant.
- There will be a simple choice to receive the income or the ECAs.
- It applies from April 2012, except for combined heat and power where it applies from April 2013 (although the draft legislation currently quotes 2014).
- Affected items will qualify for their usual capital allowances either as special rate or main pool plant, dependent on whether they are integral features or not; with the following exception:
 - "Solar panels" will be treated as integral features via a specific reference in legislation from April 2012.

The definition of solar panels is not defined, which suggests it is intended to include photovoltaic panels, as well as solar thermal installations.

Capital allowances will be provided by means of a 100 per cent first year allowance invested in plant and machinery assets.

Carbon taxes

The Budget 2011 brought announcements to reform climate change levy (CCL) and fuel duty to provide more certainty and support to carbon price and to encourage investment in low carbon electricity. Measures announced today further enhance these reforms and include three main changes, all of which will apply from April 2013. They are:

- Remove the exemption from the carbon price support rates of CCL for supplies of fossil fuels supplied to combined heat and power stations and introduce a lower rate for such supplies;
- Introduce an abated rate for supplies of fossil fuels to power generating stations equipped with carbon capture and storage (CCS) technology; and
- Require certain power generators to self-account for the carbon price support rates of CCL.

The introduction and development of relief for CCS technologies and CHP plants recognises the contribution these technologies make towards reducing CO₂ emissions and supports the policy intention of making the tax system greener.

Real estate investment trusts (REITs)

As announced in the Budget, these changes aim to reduce the cost of complying with the requirements of the REIT regime and make improvements to it. The changes include:

- The entry charge for companies to join the regime has been abolished.
- Requirement for a company to be listed on a recognised stock exchange has been relaxed and now includes listings on trading platforms such as AIM, Plus and their foreign equivalents.
- The ownership requirement that any REIT cannot be a close company has been relaxed.
- The requirement to distribute 90 per cent of their profits will be amended to ensure that tax is charged at the correct time.
- The balance of business test, which currently requires that the profits and assets of the property rental portion of the business are 75 per cent or more of the overall assets and profit have been relaxed by the inclusion of cash into that calculation.
- The sections restricting the borrowing that a REIT can undertake, by taxing them, has been changed.
- The circumstances whereby a disposal by a REIT does not benefit from the exemption from tax will be changed so that it excludes disposals to a company which is part of the same REIT.
- Takes effect on or after date of Royal Assent to Finance Bill 2012.

Increased certainty and support to carbon price and to encourage investment in low carbon electricity.

Research and development

Following consultation in November 2010 and June 2011, the Finance Bill 2012 introduces several of the measures previously announced for the research and development tax relief regime. Changes include:

For the small and medium sized enterprises (SMEs) regime:

- The rate of relief rises from 100 per cent to 125 per cent from April 2012, making 225 per cent rate of total relief.
- In order to remain within the EU State Aid limits, the payable tax credit rate will be reduced to 11 per cent.
- Vaccine research relief for SMEs will be withdrawn.
- The rule relating to the restriction of the payable tax credit to the level of the company's PAYE and NIC will be withdrawn. This will particularly help start-ups and smaller companies where staff costs may be low.
- The existing definition of "going concern" is clarified to exclude companies that are in administration or liquidation from making a claim.

For the SMEs and large company regimes:

- The minimum £10,000 expenditure for a claim is removed.
- "Externally provided worker", the scope of this is to be widened to allow for cases where additional parties are involved in providing workers.

All changes are to apply from April 2012. These changes will be welcomed as providing improved relief, particularly for SMEs, as well as clarifying a number of the more contentious areas of the regime.

And finally

Certain other measures previously announced were confirmed today, they include:

- The corporation tax rate will go down to 24 per cent from 1 April 2013.
- The Office of Tax Simplification recommendation to abolish capital allowances on safety at sports grounds assets and also flat conversion allowances from 1 April 2013.
- Business property renovation allowances will be extended, through secondary legislation, for a period of five years until 11 April 2017.
- The Office of Tax Simplification recommendation to abolish disadvantaged areas relief for SDLT.
- Legislation to bring HMRC's information powers up to the standards required by the Global Forum on Transparency and Exchange of Information for Tax Purposes.
- Legislation to address dishonest conduct by tax agents.
- Legislation to be introduced following the consultations to address anti-avoidance in respect of transactions involving plant and machinery. This includes rules introduced in August 2011 in respect of accelerated capital allowances.

Finance Bill 2012 introduces several of the measures previously announced for the research and development tax relief regime.

Further information and national seminars

A further release will be issued by us within the next seven days; this will contain a more in-depth analysis of the above proposals. This will be distributed by our regular Bottom-Line Thinking eNewsletter. If you currently receive this publication you will automatically receive our next update. If you are not a current subscriber, you can subscribe via our website:

www.bankingtaxfinance.com/newsletters/sign-up.aspx.

The fiscal incentives team are running a series of seminars throughout the U.K., details can be found on our website:

www.bankingtaxfinance.com/seminars.aspx.

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Davis Langdon fiscal incentives team profile

The fiscal incentives team is the property tax arm of Davis Langdon, an AECOM company.

It has the largest “specialist” property tax consultancy team in the U.K. and is able to offer advice on a wide range of tax and fiscal instruments which will result in direct savings to clients.

