

## FURTHER CHANGES TO CAPITAL ALLOWANCES

At Budget 2011 the Government announced it would consult on a number of proposed changes to the current Capital Allowances regime.

Having completed the various consultations, Her Majesty's Revenue and Customs (HMRC) issued a consultation response document on 6 December 2011 and also issued proposed draft legislation to effect these and other changes that would be introduced in the Finance Bill 2012.

The responses and changes announced cover:

- Claiming Capital Allowances on fixtures
- An additional technical change; Business Premises Renovation Allowances (BPPRA)
- Enhanced Capital Allowances within certain designated Enterprise Zones
- Restriction on Capital Allowances available for equipment that attracts a Feed in Tariff or a Renewable Heat Incentive
- Abolition of Capital Allowances on safety at Sports Grounds and Flat Conversion Allowances

### Claiming Capital Allowances on fixtures

The Government's three main proposals had centred round:

The introduction of time limits for businesses to -

- (i.) pool their qualifying expenditure on fixtures within a short time (one or two years) of acquisition; and
- (ii.) agree formally (in a record of agreement) the part of the sale price of a property attributable to fixtures, within a similar one or two year period from the date of sale.

In addition –

- (iii.) The Government invited comments or other suggestions for possible improvements to the wider fixtures regime. For example limiting the amount at which parties can enter into a joint election notice so that it is not below the seller's tax written down value.

A consultation Group meeting was held in July 2011 to discuss with HMRC the Government's more detailed proposals for reform and the best way forward. Tim Beresford of ca4 attended that meeting at the invitation of HMRC

Having listened to comments made at that meeting and also taken note of the 89 formal responses to the consultation, HMRC has now issued their formal response and proposals for taking matters forward.

These can be summarised as follows:

### Mandatory Pooling

The Government proposes to continue with its requirement that business owners must pool the value of his qualifying expenditure on fixtures but this pooling has been modified to any time after acquisition but before the fixtures are eventually sold on, disposed of, or transferred to another person by the current owner.

Failure to pool the expenditure will exclude a future owner of those same fixtures from making a Capital Allowances claim on them.

Whilst HMRC rightly point out that "pooling" does not mean that a person must "claim" the allowances – in response to concerns from business on their advisers on the added compliance cost of business that could not utilise the allowances available – the cost actually relates to ascertaining the qualifying expenditure that has to be pooled and not the making of the claim.

What these changes will mean is that if the purchaser of an existing property wants to claim Capital Allowances on the fixtures in that property, then they must ensure that the seller has ascertained what allowances they are or would be entitled to claim and ensure these are pooled by that seller prior to any sale.

It is clear that the proposed changes will place increased obligations on a seller, which they may be unable or unwilling - particularly on smaller properties - to undertake. If this is the case, then it will deny allowances to all future owners of that property which is a very significant and unwelcomed change in the legislation.

Another significant change is that increasingly the purchaser's entitlement to Capital Allowances will be based on a seller's qualifying expenditure rather than their own.

Where the seller is not entitled to claim allowances because they do not incur qualifying expenditure, for example a property trader, then there is no requirement to pool this expenditure to enable the purchaser to make a claim.

HMRC have confirmed to us that where the seller is a non-taxpayer, such as a pension fund, charity or government department, or the seller was not entitled to make a claim on the fixtures being transferred for any other reason - for example integral features that only qualified post April 2008 - then provided no prior owner had an entitlement to claim on these assets the section 198 election requirement will not apply to those assets and the new owner is able to make a claim on them based on an unrestricted just apportionment valuation.

## Record of Agreement

In the light of responses to the consultation the Government has decided that this proposal should be modified to a requirement that the seller and purchaser should, within two years of the sale, adopt or invoke one of the two existing procedures to fix their agreement about the value of the fixtures.

One of the existing mechanisms which only really relates to instances where the parties cannot reach agreement, is referring the matter to a First Tier Tribunal, for an independent determination.

The other more usual procedure is for the parties to enter a joint alternative apportionment election under either section 198 or 199 of CAA2001.

The proposals make it clear an alternative apportionment election will become the norm for property purchases where the seller has an entitlement to claim allowances themselves and has pooled their qualifying expenditure.

In their proposals the Government states that they wish to put on record the proposal to make alternative apportionment elections the norm, should not be seen as detracting, in any way, from the right of the seller or the purchaser to insist upon a just and reasonable apportionment of the sale value of a property to its fixtures. Surprisingly it also goes on to advocate that if a purchaser feels that a seller is not 'playing fair' and is seeking too low a disposal value for the fixtures, they can take it into account in the price offered for the property – a very strange comment to make on a system that should work fairly for both parties.

Finally, the response document highlights that the use of a voluntary (although not sure why HMRC consider it voluntary) section 198 or section 199 election, removes the need for any involvement in the valuation process by HMRC or the Valuation Office Agency (VOA).

We hope these resources will however be refocused to ensure the correct amounts are now being pooled by owners who may have little interest in their value.

## Further Improvements to the Fixtures Legislation

In view of the wholly negative reactions to the other suggested ways of improving the fixtures regime, the Government has decided that these other suggestions will not be taken forward further at this time.

## Transitional Provisions and next steps

The proposed changes will be subject to transitional provisions in relation to transfers effected between April 2012 and April 2014

The Government also welcomes comments on the technical details of the legislation issued to deal with their proposed response, by 10 February 2012.

The details of the legislation will also be discussed at the second meeting of the Fixtures Working Group to be held on 13<sup>th</sup> December 2011. We have again been invited to attend this meeting and I am pleased to say Clive Searle will be representing ca4 to make our views known.

## An additional technical change: Business Premises Renovation Allowances (BPRA)

As part of the consultation and additional technical issue emerged concerning the claiming of Capital Allowances on fixtures that previously formed part of a BPRA claim.

The proposed change will, therefore, allow future purchasers of a property to claim allowances (under Part 2 of CAA2001) on the price relating to fixtures, to the extent that fixtures expenditure has not already been relieved, or if it has there has been a balancing event, by BPRA (under Part 3A of CAA 2001).

***But please read on later about a fundamental change to BPRA projects.***

## Enhanced Capital Allowances with certain designated Enterprise Zones

The Proposal to introduce Enterprise Zones was announced at Budget 2011.

On 29<sup>th</sup> November 2011 the Chancellor of the Exchequer confirmed the Government's original intention to provide 100 per cent first-year allowances (FYAs) for Companies investing in plant and machinery for use in certain designated areas.

The Chancellor confirmed that these limited designated areas will be in areas that are heavily focused on manufacturing and comprise the Black Country, Humber, Liverpool, North Eastern, Sheffield and Tees Valley.

Within these areas 100 per cent FYAs will be available on expenditure incurred in the five year period from 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2017.

The FYAs will, however, only be available to trading companies and there will be a specific exclusion for expenditure on assets for leasing.

Amongst other qualifying criteria, the expenditure must also be on plant and machinery that is unused and not second hand and must comprise investment not replacement expenditure

### **Restriction on Capital Allowances available for equipment that attracts a Feed in Tariff (FiT) or a Renewable Heat Incentive (RHI)**

A consultation on proposed changes to the capital allowances treatment of plant or machinery that could attract FiTs or tariffs under the RHI was announced at Budget 2011 and took place over the summer.

Legislation will be introduced in Finance Bill 2012 to ensure that expenditure on solar panels from April 2012 will be designated special rate expenditure, although, the Annual Investment Allowance (AIA) will continue to be available on such expenditure.

Additionally, from April 2012 (or April 2014 for CHP installations) the current 100 per cent Enhanced Capital Allowances (ECAs) given on energy and water efficient plant and machinery will not be available in respect of expenditure on plant and machinery when it generates electricity or heat (or produces biogas or biofuels) that attracts tariff payments under either of the FiTs or RHI schemes. ECAs may still be claimed in respect of qualifying equipment as long as no tariffs are paid.

Any ECAs given, in respect of expenditure incurred from April 2012 (or April 2014 for CHP Installations), will be withdrawn if FiTs or RHI tariffs are paid subsequently.

### **Abolition of Capital Allowances on safety at sports Grounds and Flat Conversion Allowances**

In its commitment to simplifying the tax system and ensure it is straightforward to understand and easy to comply with, the Government established the independent Office of Tax Simplification (OTS) to carry out reviews and make recommendations to the Chancellor.

The OTS identified 1,042 tax reliefs and conducted detailed assessment of 155 of these. On the basis of the OTS's recommendations, the Government decided to abolish 43 reliefs. Of these reliefs 7 were found to have expired and were abolished in Finance Bill 2011. The Government decided to abolish the remaining 36 after formal consultation.

The response to this formal consultation was issued on 6<sup>th</sup> December 2011 confirmed that both Capital Allowances on safety at Sports Grounds (sections 30-32 of CAA2001) and Flat Conversion Allowances (Part 4A CAA2001) will be repealed in Finance Bill 2012 with effect from 1<sup>st</sup> April 2013 for Corporation Tax and 6<sup>th</sup> April 2013 for Income Tax.

### **Additional announcements**

HMRC also confirmed that for various reasons they did not intend to proceed with the proposed abolition of Land Remediation Relief, which will be welcome news to developers and house builders in particular.

There was, however, no announcement on the separate consultation that closed on 30 September 2011 and included, amongst other things, proposals to limit sideways set off relief for excess losses created by Capital Allowances in "an ordinary property business". This must be welcome news to the increasing number of syndicated BPRAs investment funds.

What probably will not be at all welcome though is that in extending the BPRAs scheme by another 5 years until April 2017 the secondary legislation will introduce a number of changes to ensure the scheme remains State aid compliant.

As a result, for expenditure incurred after April 2012 the maximum amount that can qualify for BPRAs will be €20 million per project.

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