



# Value, risk and litigation: A new unholy trinity?

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**R**ECENT legislative changes coupled with recessionary pressures mean surveyors need greater awareness of property taxation rules than ever before. Preparing estimates and costing work are key tasks for surveyors working in the commercial management of projects. There is often a need to advise engineers on financial issues and an ongoing development will require continual cost evaluation and management.

When it comes to tax relief on property – available through the myriad of capital allowances, entitlements and exemptions – just how specialist should a civil engineering surveyor be?

The message is to tread carefully here and work in collaboration with property taxation experts. Certainly, surveyors and other professionals in the project team need to be aware of, and act on, the tax implications of planned work at the earliest possible opportunity.

This is where professional advisers come into play, cutting through the various taxation rules and identifying the widest range of options available. The need for specialist property taxation advice is all the more acute because recessionary pressures are increasing the risk of litigation against surveyors and other professional advisers, as clients seek to recover loss and expense from poor, inappropriate or even negligent advice.

Successive Budgets have introduced greater complexity into the rules on property taxation, particularly around capital allowances. This has done two things; increased the compliance burden on those paying tax and emphasised the need for capital allowances as a key component of tax planning.

Those project teams who have timely, robust and high-quality advice on these matters stand to benefit in terms of risk, cost and financial returns. An early decision about tax liability can generate substantial savings and may even kickstart projects that are stalled at the moment and waiting for funds to be approved, once the tax impacts are factored into the project's affordability.

Surveyors with commercial management responsibilities should be aware of a number of important developments to discuss with their tax advisers:

- 1) The significant savings that are available to clients from land remediation tax relief (LRTR), including the impact of recent changes.
- 2) Plant and machinery allowance (PMA) changes.
- 3) The new integral feature allowances.
- 4) the phasing out of industrial buildings allowance (IBA).

## Land remediation

LRTR, despite being available since 11 May 2001, is still little understood yet it is a hugely valuable tax break on decontamination costs. LRTR can provide tax

relief at up to 150% of the costs incurred in cleaning up brownfield sites.

LRTR has now been extended into "*remediation of derelict land*" too, for long term derelict sites, so minimising pressure on the greenbelt, while improving the economic viability of regeneration projects with qualifying expenditure from 1 April 2009, following enactment of the *Finance Act 2009*.

HM Revenue & Customs has taken the opportunity to significantly reform the existing LRTR rules. This will impact on a great many brownfield projects with more narrowly defined tax relief, again dating from 1 April 2009. Consequently, careful investigation and project planning will be required for tax-paying companies to truly optimise their tax savings.

## Plant and machinery tax changes

In this year's Budget, the chancellor doubled the rate of capital allowances for plant and machinery – a welcome boost for those undertaking current projects in the fiscal year to 31 March 2010.

However, this is a very short period for planning investment spend and it came only a year after most first-year allowances were scrapped, so many businesses will have considered the avenue closed and may not be able to respond quickly enough, let alone obtain planning or funding.

If it is possible to claim, tax payers will get relief at 40% in the first year, before the rate reverts to 20% per annum on a reducing balance basis thereafter. It is important to remember that plant and machinery allowances only represent 20-45% of all the qualifying expenditure.

The allowance is due to disappear altogether by April 2011, denying relief to any tax payers that have built their industrial premises, hotels or even toll roads and bridges after March 1986.

## Integral features

Additionally, integral feature allowances, only introduced in April 2008, will be significant to the expenditure. Although these give relief at 10% pa, the overall range of assets that qualify under this category is somewhat extended from those that were within the 'old form' of plant and machinery. In particular, careful attention to active facades, curtain walling and brise-soleil could yield surprising results for those not familiar with property taxation.

There are also enhanced capital allowances that give 100% for certain energy efficient or water conservation assets.

## IBA changes

The phasing out of industrial building allowances may also be a significant issue for surveyors working in major project teams.

The allowance is due to disappear altogether by April 2011, denying relief to any tax payers that have built their industrial premises, hotels or even toll roads and bridges after March 1986.

The younger the facility, the more significant the loss of tax relief will be to trading activity. The removal of these valuable tax allowances should be factored into all project appraisals past and present. In particular, those involved with project finance may wish to review past project models to ensure funding covenants and cash flows are still sustainable within the new tax regime.

HM Revenue & Customs has recently confirmed to businesses that they cannot switch from one capital

allowance to another outside "normal tax submission and compliance" timeframes. In other words, tax payers cannot use plant and machinery allowances as a substitute where previously they had used IBAs, unless they amend their claim within this established tax window.

This is likely to be a major stumbling block affecting tax-payers with industrial, hotel, car dealership or agricultural assets. There may still be scope for those who have submitted claims in the past two to three years to optimise their claims, depending on their precise circumstances, but they must act quickly.

## Avoiding the charge of professional negligence

Given the rapidly changing landscape of property taxation, there are both opportunities and pitfalls for surveyors involved in commercial cost management.

They can benefit best by working more collaboratively with specialists who have the appropriate expertise for the required task in hand.

The case of *Clarke v Iliffes Booth Bennett* (Chancery Division 21 July 2004) provides a useful analogy. Although chiefly concerned with solicitors, its message is that property professionals can no longer 'hide' behind their scope of engagement and need wider awareness of project consequences. By extension, project teams involved in apportioning costs contained in a contract need to understand capital allowances clauses and provide clients with robust explanations and advice to achieve the optimal outcome.

With the risk of litigation increasing, surveyors and other professional consultants must take active steps to ensure they are not pushing the boundaries, or trying to be a 'Jack of all trades' with their in-house knowledge and capabilities.

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