E3 Consulting’s Highlights from March Budget Statement – Real Estate Tax Update

Despite extensive consultations over the last twelve months and the customary pre-budget ‘leaks’ there were still a few surprises in the Budget Statement, associated Press Notices and draft legislation for the imminent Finance Bill 2012.

E^3 Consulting’s managing Director, Alun Oliver, highlights here the key property and tax issues for your information. If you wish to discuss any specific measures please do contact us.

Business Premises Renovation Allowances (BPRA)

BPRAs have been extended for a further five years to April 2017.

These 100% allowances are available on qualifying expenditure incurred in renovating and converting empty commercial properties in certain disadvantaged areas around the UK. For expenditure incurred from April 2012, BPRA is limited to €20m per project.

BPRAs have seen a recent surge of popularity by some seeking to use them as tax shelters for HNWIs which is no doubt why HMRC sought to include the project cap. The geographic locations eligible still mean that BPRAs have a limited appeal or benefit, and are further restricted to exclude certain industry sectors that may already have had economic support; including Farming, Fisheries, Steel and Coal. We have seen a number of poorly structured BPRA offerings – so if you are considering investing in a BPRA Fund/Scheme do get in touch.

Capital Allowances: Fixtures

From April 2012, the availability of capital allowances to a purchaser of fixtures will be conditional on businesses following a new statutory mechanism for fixing the value and pooling its fixtures within two years of purchase. Failure to meet the criteria within this new two year time limit will deny any further allowances in respect to the property. In addition purchases after April 2014, from vendors that could have, but did not pool their allowances will invalidate any further fixtures claims.

Most of the proposed changes have been widely publicised and draft legislation available for scrutiny and comment. Purchasers (and their advisers) will be most affected by these complicated rules. Unfortunately the majority of professional advisers, but particularly lawyers and property agents still fail to appreciate either the value and the importance of capital allowances and often assume ‘someone *else' will deal with CAs. These complex new changes will impact transaction due diligence and potentially lead to significant negligence claims against professionals, that fail to take on board the appropriate specialist advice at the correct time – given that failure to comply will potentially lead to a permanent loss of the tax relief available if the correct procedures are not met within the required timeframe. Please contact us for further details of the full changes to ensure you (or your clients) don't lose out on the right to capital allowances.*

Capital Allowances: Fixtures Rates of Writing Down Allowances

Following previous announcements the tax writing down allowances were confirmed as 18% per annum for plant and machinery allowances and 8% per annum for special rate pool expenditure from the 1/6 April 2012 as applicable to corporation or income tax payers respectively.

These changes slightly slow the cash flow benefit of allowances but without any permanent loss of relief. With specialist property tax support tax payers can ensure they are claiming the optimal level of allowances – ensuring they have carefully analysed their expenditure into the appropriate categories – whether as ECAs, AIAs, PMAS or IFAs!

Change to Corporate & Income Tax Rates

The Government announced that the Corporation Tax rates would reduce further to 24% from the start of April 2012 and fall by a further 1% for each of 2013 and 2014.

Income tax rates were adjusted with the Additional Rate of 50% being reduced to 45% from April 2013.

Reductions in the headline rates of tax should always be welcomed, as they allow tax payers to decide where to invest and/or exercise their entrepreneurial skills, which generally create more wealth and growth to underpin vibrant economies. Devil is always in the detail, as too often HMRC seeks to take away elsewhere what it gives with bold tabloid headlines, albeit on this occasion the measures seem largely balanced!

Enhanced Capital Allowances: Energy-Saving And Water-Efficient Technologies

The list of designated energy-saving and water efficient technologies qualifying for enhanced capital allowances will be updated during summer 2012.

Increasingly ECAs must be considered alongside the Carbon Reduction Commitment (CRC) as businesses start to manage their carbon foot print and seek to reduce their CRC costs, also aligning their Corporate Social Responsibility (CSR) benefits too! Programs that reduce carbon will often benefit from capital *allowances and if also meeting the Energy or Water Technology criteria for energy saving or water conservation benefit from 100% ECAs.*

Enterprise Zones: First Year Allowances (FYAs) For Designated Areas

There has been much talk of "Enhanced Capital Allowances" – a phrase commonly used in respect to the 'new' Enterprise Zones (EZs) but to tax professionals, potentially confusing as in this context these "enhanced allowances" DO NOT relate to the 100% allowances for certain energy or water efficient assets also known as ECAs, but simply allowances 'greater than those ordinarily available' but for the project being located in the relevant EZ!

However 100% FYAs are to be introduced under section 39 CAA2001 and a new section 45K for expenditure incurred by trading companies on qualifying plant and machinery for use primarily in 'designated assisted areas' within previously announced EZs:

- London Royal Docks Enterprise Zone,
- three Scottish Enterprise Zones in Irvine, Nigg and Dundee,
- Deeside in North Wales
- an additional EZ to be confirmed in the Humber region.

Increasing the value and cash flow benefit of capital allowances is always well received by industry and should help stimulate wider economic activity. However there remains some concerns about the limited 5 year duration of the EZs and whether they are sufficiently long enough to endure the UK's notorious planning regime (even with NPPF see later) and still deliver economic impetus to regeneration? Government also fights shy of permitting participation in these 'additional' FYAs to other tax payers not within the charge to corporation tax, limiting the full scope further, given the widespread (and bone fide) use of non corporate vehicles for property investment. There are also planning and other indirect tax benefits of locating new businesses within EZs.

Feed-In Tariffs And The Renewable Heat Incentive

As announced in the 2011 Budget, Renewable Energy Schemes (RESs) introduced by DECC (feed in tariffs and renewable heat incentives) will not be entitled to the 100% enhanced capital allowances on the relevant expenditure, but restricted to the special rate pool at 8% p.a. (from 1/6 April 2012) where owners opt for the applicable RES support.

- Solar panels will also be designated as special rate expenditure for capital allowances from April 2012 also benefiting from the standard 8% writing down allowances.

This has been an on-going saga for the Government that maintains that the previous system, allowing a 'double dip' from both 100% ECAs and RHI or FiTs was simply too generous and would in the longer term *have rapidly curtailed economic support for these sustainable energy measures. Thankfully the developers/investors now have the choice as to which incentive to take – ECAs or RES.*

First-Year Tax Credits for ECAs Plant or Machinery

From April 2013, the Government will extend the availability of first-year tax credits for expenditure on certain environmentally beneficial plant or machinery that generates a loss for a further five years to 31 March 2018.

Again this measure will further support SMEs to adopt energy efficiency in preference to shorter-term lower capital cost of lesser assets, where the level of investment creates short-term losses and otherwise would negate the benefit of ECAs.

Landfill Tax

The Budget confirmed the Standard Rate of Landfill Tax was to increase from 1st April 2012 to £64 per tonne and subsequent increases to £72 per tonne in 2013 and £80 per tonne in April 2014. The Lower Rate was unaltered at £2.50 per tonne.

This measure was all as expected and continues the fiscal pressure on developers and environmental consultants to find more cost effective remediation strategies than 'dig & dump'! Unfortunately this measure also impacts regeneration projects, which previously may have benefited from an exemption from landfill tax – jeopardising project viability – though, in part, eased by the continued retention of Land Remediation Tax Relief (LRTR).

National Planning Policy Framework (NPPF) & Planning Simplification

The Government published the NPPF on 27 March 2012, coming into force for plan-making and decisions from that point onwards, with appropriate implementation arrangements for local authorities in local plans. The NPPF is intended to refocus planning policy to better support growth, and includes a powerful presumption in favour of sustainable development to underpin all local plans and decisions, and will localise choice about the use of previously developed land, ending nationally imposed targets. The Government will also work with key statutory consultees to ensure that they support the delivery of sustainable development in line with the NPPF and are held to account for doing so.

The Government will consult on reducing information requirements and on proposals to amend the Use Class Order and associated permitted development rights, to make changing the use of buildings easier, for implementation by April 2013. In addition new permitted development rights for micro-renewable energy installations will come into force from April 2012. The Government will also shortly set out more detail on the twelve-month Planning Guarantee.

The planning regime in the UK has long been seen as too complex and painful and any improvement will be greatly welcomed. Some fear these changes will give too much power to developers, but with appropriate enforcement of the rules and proper engagement in the consultation we should see improvements in getting major projects approved and on site without endless enquiries and judicial reviews!

Plant and Machinery Leasing & Anti Avoidance Rules

As announced at Budget 2011, from April 2012, the capital allowances anti-avoidance legislation is to be widened to protect the Exchequer from a loss of tax revenue as a result of transactions to acquire plant or machinery which are part of a scheme or arrangement involving avoidance or where there is an avoidance motive. Where such arrangements are identified the effect of the rules will be to deny first year allowances and the annual investment allowance for expenditure on plant and machinery and to restrict the amount of allowances to the "buyer" such that the tax advantage sought is cancelled.

With effect from 21 March 2012, changes will be made to capital allowances rules to counteract disclosed avoidance schemes which seek to bring in an artificially low disposal value for capital allowances purposes at the end of a long funding lease.

Long a target of the Government, these changes set out in Schedule 9 Finance Bill 2012 seek to restrict the tax leakage from leasing abuses of schemes designed to obtain tax advantages.

Real Estate Investment Trusts (REITs)

Largely announced in March 2011, from April 2012, there are to be various measures reducing the onerous restrictions on REITs by reducing barriers to entry and simplification of the rules. Further consultation is to be undertaken to explore solutions to make REITs accessible to Housing Associations, measures to permit cross ownership and joint ventures between REITs and views on feasibility (and no doubt desirability) of Mortgage REITs.

These consultations are to be welcomed as the initial REIT regime was far too rigid to be attractive to some investors and particularly those holding Residential property. This Government seems to be listening to the industry's voice and making progress in simplifying REITs to improve take up.

Research and Development Tax Credits

- From April 2012, the rate of R&D tax credits for small & medium sized enterprises (SMEs) will increase from 200% to 225%
- The limit of SME payable credit based on their PAYE/NICs liability will be removed
- £10,000 minimum expenditure requirement for large companies will be abolished.
- From April 2013 an 'Above the Line' credit for R&D with a minimum rate of 9.1% before tax. Loss making companies will be able to claim a payable credit.

These measures will further push innovation into the heart of UK industry making the tax relief more visible to both the R&D personnel and company's directors, ensuring a wider take up of these reliefs and hopefully an increase in exploitation of new inventions and vaccines.

Stamp Duty Land Tax Rates & Anti Avoidance Measures

A new SDLT rate of 7% for residential properties over £2 million and at 15% where £2m plus properties are purchased through a company or other non natural persons will apply from 21 March 2012. The Government has also declared it will take action to close down future SDLT avoidance schemes as quickly as possible, with effect from 21 March 2012 and that SDLT will be incorporated in any future general anti-abuse rule (GAAR).

SDLT avoidance was declared as "morally repugnant" and these significant increases combined with a proposed annual charge of between 0.3% and 0.7% on properties held in companies from next year clearly signals the Government's determination to tackle SDLT abuses. There will no doubt be some 'collateral damage' where corporate vehicles are used for a variety of legitimate reasons outside the realms of SDLT planning that may now be caught, unless specific exemptions are brought to bear.

VAT: Charitable Buildings, Correcting Anomalies And Closing Loopholes

The Budget included a package of VAT measures allegedly 'addressing borderline anomalies'. Property proposals here include removing zero-rating for alterations to some listed buildings, and the taxation of 'self-storage' facilities, both from 1 October 2012.

For listed buildings, the Government can claim with some justification that the current rules create a 'perverse incentive' to alter rather than to repair. But the details of the proposed changes suggest that this is essentially a revenue-raising measure, with listed buildings seen as a relatively easy target. And the transitional measures are very limited – it seems likely that specialist builders will be in great demand over the coming months, and under pressure to do work quickly, rather than well. Most of the other proposals here seem to go rather further than HMRC have acknowledged (or perhaps realised) and to run the real risk of creating a new set of 'borderline anomalies' with very real prospects of deterioration to our listed building stock!

Zero Carbon Homes Relief

The SDLT relief for zero-carbon homes will end as planned on 30 September 2012.

This measure was largely seen as a gimmick and with limited sustainable benefit for the construction or house building sectors, where the SDLT savings were greatly outstripped by the costs of meeting the criteria!

E³ Consulting, property taxation specialists, operate from Offices in Southampton and London and work with clients that own, operate, develop or invest in property across the UK as well as overseas. We work closely with other professionals, be they accountants, solicitors, surveyors, bankers or engineers to ensure their clients' projects are properly incorporating the appropriate tax breaks, incentives or costs.

If you would like to discuss any aspects further please contact our team to understand if you, or your contacts or clients, could lose out, or hopefully benefit from tax savings through our specialist advice. To see how much you could save against any current, future or even historic property expenditures contact us on healthcheck@e3consulting.co.uk or 0345 230 6450.

In addition to our website: www.e3consulting.co.uk

You can keep up to date with property tax issues and our thoughts on them by:

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If you 'Like' our Facebook page before the end of May 2012, you will be entered into a draw for two tickets to England v South Africa at The ageas Bowl, Southampton (formerly The Rose Bowl) GOOD LUCK!