



‘CARPE DIEM’ GOOD ADVICE FOR PROPERTY INVESTORS?

“FINANCE ACT 2011: THE SO-CALLED ‘GUILLOTINE’ CLAUSE, IF ENACTED, WOULD SEE ALL UNCLAIMED AND UNUSED CAPITAL ALLOWANCES ARISING AFTER OR CARRIED FORWARD FROM 2014 AS WELL AS UNUSED SECTION 23 RELIEF CARRIED FORWARD FROM 2014 CEASE TO BE AVAILABLE. LAW FIRM WILLIAM FRY HAS SAID IT WILL BE VERY SURPRISED IF A CONSTITUTIONAL ACTION IS NOT TAKEN BY A CITIZEN IF THESE GUILLOTINE PROPOSALS BECOME LAW.”

To say that property investors have had a particularly rough time of late is no exaggeration. The problems with funding, valuations and lettings are well known and there may be additional tax problems ahead for investors in both the United Kingdom and the Republic of Ireland, as **Andrew Reid, ACA** explains.

Corporate and unincorporated property investors in the United Kingdom have been faced with several unattractive tax amendments in recent times. The phased abolition of the Industrial Buildings Allowances and the Hotel Buildings Allowances caused consternation as millions of pounds’ worth of tax relief vanished into the Exchequer’s pocket. More recently, capital allowances rates have also been reduced, meaning that UK corporate tax paying property investors have lost annual capital allowance rates, but will benefit from lower corporation tax rates in the future.

For unincorporated businesses with property investments, the taxation horizon looks significantly more troubling. The rise in capital gains tax rates to 28% will penalise future sales if and when property values recover. Rental income will also incur higher tax charges as the 50% rate comes in and the capital allowances reliefs are lowered.

In the Republic of Ireland, it seems likely

that unincorporated businesses involved in the property market will also take a significant tax hit. The proposed restrictions on property-based tax incentives limit opportunities to shelter income and will impact rental income across the sector.

Finance Act 2011 introduced a range of measures that impact rental tax reliefs and allowances. These include the aptly named ‘guillotine’ to terminate unclaimed property-based capital allowance incentive schemes arising after or carried forward from 2014.

Property-based capital allowance incentive schemes have also been subject to restrictive proposals, including the ending of utilisation against rental profits from other properties (now these allowances will only be available against rental profits from the property generating the property-based capital allowances).

Up to now, some schemes allowed the investor to set some of their excess allowances (i.e. up to €31,750 or, in certain cases, the full amount of the excess allowances) against other

income (e.g. employment income). However, when the guillotine proposals are introduced the availability of this relief will cease.

Finally, any unused reliefs beyond the seven/ten year qualifying period that existed up to now will be lost and further restrictions with respect to onward sales or transfers have also been proposed.

Following an outcry at the number of potential property investors facing hefty losses, a stay of execution has been granted for the property-based capital allowances for the time being. However, this comes with the reservation that changes can be enforced not less than sixty days after an economic impact assessment of the effect of the withdrawal of these reliefs has been completed, meaning that should the changes be enforced, property investors would have very little time to take steps to help reduce their tax liabilities or to offload property from their investment portfolio.

Even if the guillotine provisions are not ultimately enacted, the restriction of reliefs for high earners has increased significantly with

effect from the 2010 tax year. This means that investors will only be able to claim these 'restricted' reliefs (which include not just property-based capital allowances but also charitable donations, film investment relief, etc) up to a maximum of 20% of their income or €80k, whichever is higher.

With taxation rates rising and available relief falling, this is an opportune moment to consider proactive tax planning.

There is little doubt, regardless of the successful lobbying to date, that Irish landlords and property investors will be forced to endure a heavier taxation burden in the coming years. Therefore, in comparison to UK advisors who were often forced to move after the Industrial Buildings Allowance abolition announcement, it is appropriate for Irish advisers to maximise the basic tax reliefs and allowances due to clients, whilst the changes can still be made. For example, a review of capital expenditure on property to identify traditional plant and machinery allowances (rather than other property-based incentives) offers a relatively simple route to

extending (and in some cases increasing) tax allowances available on properties.

Importantly, the traditional plant and machinery allowances, which may have been ignored whilst other property-based incentives were delivered, are not expected to be subject to the restrictions placed on other areas of taxation reliefs and allowances. So an exercise to re-analyse expenditure may provide gains without significant input.

By making prudent amendments to taxation computations, the mitigation of the taxation burden will actually be closer to an indirect benefit as certainty can be provided to clients in a thoroughly uncertain regime. The old idiom of not putting off until tomorrow what can be done today is relevant here. With the current uncertainty existing beyond today, it is quite possible that tomorrow will just be a little bit too late. ■

Andrew Reid, ACA works for investment incentives specialist Capitus. Visit www.capitusgroup.co.uk for more details or contact Andrew at reid@capitus.co.uk.