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At the end of August, Revenue and Customs is closing its consultation on changes to capital allowance for fixtures in buildings

Q+A: capital allowances countdown

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It plans to implement the reforms in the Finance Bill 2012. There will be a huge effect on property companies, yet most are unaware of what is happening. Aubrey Calderwood explains
Right now, many of you will be holding properties for investment or owner-occupation that contain items of plant or machinery – such as lifts and air conditioning systems – that will qualify for tax relief through capital allowances. However, if you do not act soon, your right to claim that relief will be lost.

What is happening?

On 31 May 2011, Revenue and Customs issued a consultation document called Capital Allowances for Fixtures. The closing date for comments is 31 August 2011, which only gives the property industry two months to get its act together and respond.

The document includes a change that is restrictive and potentially punitive to taxpayers that own property assets, and it needs to be addressed now before it is too late. In essence, the Revenue proposes to restrict a taxpayer's ability to revisit historic expenditure and claim tax relief for it.

This could result in millions of pounds of tax relief that taxpayers were entitled to claim being forfeited for good. If the taxpayer does not claim tax relief in the period in which that expenditure has been incurred, or shortly after, entitlement is likely to be lost. This could mean that the tax relief has to be taken up within a year or two of the initial outlay.

Why is the Revenue doing this now?

The current system has existed for many years without any significant problems. However, in the past year a plethora of "new" capital allowances advisers have emerged and some do not appear to be using best practice to establish whether previous owners of the property in question have claimed all the available capital allowances.

The Revenue is now concerned about tax "leakage" and wants to introduce the measures to curb the worst excesses. While we agree that this issue needs to be addressed, we believe the regime will unfairly penalise those entitled to make legitimate claims.

How much money is at risk?

If you bought an air conditioned office building 10 years ago for £5m, the plant and machinery relating to fixtures within that property – air conditioning, sanitary ware, heating systems, lifts (pictured) and so on – could be worth anything up to £1.5m.

For a company that pays the 26% rate of corporation tax, that equates to a total tax saving of £390,000. For an individual who pays income tax at the 50% higher rate, the tax savings are even more striking at £750,000. Those figures relate to the tax relief to which you were entitled but did not claim, and so is therefore a figure that you have paid but shouldn't have.

Why might this have happened?

There are two main reasons. First, it can come about through any combination of the following: a lack of awareness that the relief exists; a lack of knowledge of the complicated and onerous rules surrounding the mechanisms for making legitimate claims; and an assumption that the plant or machinery is not worth much.

Second, in the early years after purchasing or building the property, the company or individual may not have been in a tax-paying position. This could have happened because invariably they will have bought or built the asset using mortgage debt.

They would have been able to offset the interest on that debt (and other costs) against any tax liabilities on rental income arising or company profits. In other words, capital allowances were perceived to be of no use initially but when the company or individual became liable to pay tax, the entitlement to claim capital allowances was simply forgotten about.

Up until now, if that had happened, a taxpayer could examine their historically owned property and make a claim in a current or recently open tax year. This could result in repayments of overpaid tax and reduced tax liabilities.

Under the new system, those historic claims would not be allowed. This change – buried away in an obscure Revenue and Customs consultation – could lead to some property owners losing out on tax relief worth millions of pounds.

What can firms do now?

For companies or individuals who may be concerned and affected by these proposals, we recommend:

- You read the consultation on PropertyWeek.com and respond to it
- Act now. You should undertake a historic review of your assets and establish those properties where claims could be legitimately made after proper due diligence, before the window of opportunity to do so closes. After the consultation, the measures agreed will be adopted in the Finance Bill 2012.

Aubrey Calderwood is director of investment incentives consultant Capitus. You can read a longer version of his article in the attached Word document.

<http://www.propertyweek.com/professional/q+a-capital-allowances-countdown/5020769.article>