

FINANCE BILL 2012 Capital Allowances Perspective

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Finance Bill 2012: Capital Allowances Perspective

The draft legislation for Finance Bill 2012 was released on 6 December 2011 with more than a few surprises. Although confirmation that the Enterprise Zone allowance would pass the EU State Aid regulations was received, the proposed rules are perhaps more restrictive than first hoped. Also, the much-maligned consultation regarding Capital Allowances for Fixtures has closed with not all the proposed measures being included.

In a Nutshell...

- Mandatory Pooling for fixtures will only be required should an owner wish to pass on entitlement to capital allowances. Therefore, no time limit for making capital allowances claims will exist for the current owner.
- Rather than a separate, formal record of agreement, the value of capital allowances for fixtures must be agreed and documented using current methods upon sale.
- Enterprise Zone First Year Allowances of 100% will be available for 'new' investment in plant or machinery within certain areas.
- Flat Conversion Allowances will be abolished from April 2013.
- Land Remediation Relief will now NOT be abolished.
- Enhanced Capital Allowances for plant or machinery which qualify for payments under the feed-in tariff or renewable heat incentive regimes will NOT be available from April 2012.

Capital Allowances for Fixtures

Following the closing of the consultation at the end of August, the threat of mandatory pooling, record of agreements and the cessation of the s.198/199 election regimes loomed large. The following notes summarise the original proposals, consultation responses and the Government's decisions:

Proposal 1: Mandatory Pooling

The main proposal was that businesses should be required to pool their expenditure on qualifying fixtures within a 'short period' after acquisition to qualify for capital allowances. The current rules allow a taxpayer to claim capital allowances at any time after the acquisition, so long as the item is still owned and used in the business.

The majority of respondents to the consultation did not object to the mandatory pooling proposals, but did raise significant concerns with respect to the timing of any new rules and the impact on loss-making businesses which are not currently incentivised to undertake an analysis.



The Government's response was to remove 'new' expenditure from the original proposals and to remove the time limit for pooling. However, a business wishing to pass on entitlement to capital allowances on historic expenditure must pool the expenditure prior to the transfer.

Proposal 2: Record of Agreement

The second main proposal was that in order to qualify for capital allowances, sellers and purchasers of second-hand fixtures should record the agreed value within a specified period of time. It was also proposed that market value must be applied at sale to restrict the acceleration of allowances. Whilst most respondents supported these proposals, some qualified their support with respect to the value used. Others volunteered the suggestion to make section 198/199 elections mandatory upon sale (therefore negating the requirement for an official record of agreement).

In light of the evidence received, the Government has proposed not to introduce the record of agreement or market value disposal requirements. Instead, it has been proposed that every transaction must have a value for fixtures qualifying for capital allowances agreed either through a s.198/199 election or via a tribunal. The transfer value will not be restricted beyond current rules.

Proposal 3: Improvements to sections 197, 198 or 199 CAA 2001

The Government wished for clarification of the two main fixtures proposals and simply asked for any other suggested improvements to the regime at this opportune time. However, the respondents did not agree with the Government's suggestions to limit accelerated tax relief available through the utilisation of nominal elections.

Three-quarters of the respondents were not in favour of these proposed amendments and the Government has decided not to take these forward at this time.

Draft Legislation

Upon first reading the Government responses to the consultation document, one may be forgiven for thinking that little has changed. Unfortunately however, this is not the case and if agreed in current format, these proposals are likely to significantly increase taxation and administrative burdens.

S187A, CAA 2001 - Effect of changes in ownership of a fixture

This new piece of draft legislation applies to a person incurring capital expenditure on fixtures from a past owner who was entitled to claim capital allowances on their expenditure. Firstly, if the past owner does not pool their qualifying expenditure or has not claimed a first year allowance prior to sale, no capital allowances would be available to the purchaser. Secondly, if this 'pooling requirement' is met and the parties wish to transfer capital allowances, a value must be agreed with respect to this expenditure either by utilising a section 198/199 election or by using a tribunal process within two years of acquisition.

Therefore, in order for a taxpayer to pass on capital allowances on fixtures to a future purchaser, those allowances must be pooled by the vendor prior to transfer and a value agreed by an election.



The new legislation would appear not to apply in the following circumstances:

- (i) Purchase of a development which had been accounted for as trading stock by the vendor if no previous owner has been entitled to capital allowances.
- (ii) Purchase of a property from a non-taxpaying entity (e.g. public body, charity or pension fund) if no previous owner has been entitled to capital allowances.
- (iii) Claiming capital allowances on new build developments, refurbishments or renovations.
- (iv) Claiming 'integral features' special rate allowances on acquisitions where the vendor owned the property prior to 1 April 2008.

Retrospective capital allowances claims by the owner of a property will still be available, so long as the owner continues to hold the property and no other taxpayer has already claimed the allowances.

The value agreement will apply to balancing events after 1/6 April 2012 whereas transitional arrangements are expected to apply to the pooling requirement until 1/6 April 2014.

If the draft legislation is passed without amendment, the biggest losers will be those purchasers that acquire a property after April 2014 when the seller was entitled to claim capital allowances but did not actually pool these allowances. However, all is not lost – if the prospective purchaser can convince the vendor to pool allowances prior to sale, they could transfer the benefit of allowances using an election.

Quite how this would be arranged in practice will depend upon significant goodwill between the parties.

If the vendor has not pooled all or part of the allowances, they will be lost to all future purchasers, therefore punishing an informed investor. So whilst the stated policy objective is to ensure that 'expenditure on a fixture can only be written-off once...over its economic life' - the situation that a fixture will not be written-off at all will occur if (future) vendors fail to pool allowances after April 2014.

Business Premises Renovation Allowances (BPRAs)

In a similar fashion to industrial buildings allowances and research and development allowances, the BPRA scheme is to be updated with s.186A to allow a future purchaser to claim P&M allowances for fixtures which may have previously been classified as BPRAs by a previous owner.

Therefore, where a property has qualified for BPRAs is sold and a balancing charge arises, then the new owner can claim P&M allowances under Part 2, CAA 2001 from April 2012.

Enterprise Zone Capital Allowances

Further to earlier announcements, the Government has decided to introduce 100% First Year Allowances for trading companies investing in plant or machinery for use primarily within designated assisted areas. These allowances will be available for investment between 1 April 2012 and 31 March 2017 but staple industries, waste management companies, fisheries and agricultural businesses will not be able to avail of



the relief. The expenditure must be on new and unused plant or machinery which is not a mode of transport.

The allowances will be capped at €125m and at present will only be available for investment in the zones located in the Black Country, Humber, Liverpool, North Eastern, Sheffield and Tees Valley.

Capital Allowances for Energy-Saving Plant and Machinery

Following a brief consultation period, the Government has decided to withdraw Enhanced Capital Allowances (ECAs) for electricity or heat generating plant or machinery which would qualify for payments of either feed-in tariffs or renewable heat incentives.

This change will apply for expenditure incurred on or after 1/6 April 2012 but for 1/6 April 2014 where expenditure is on Combined Heat and Power technologies, so there is still time to claim this generous allowance on such expenditure.

Flat Conversion Allowances

Following the Office for Tax Simplification's review into the tax allowances and reliefs, the Government has decided to abolish Flat Conversion Allowances from 1/6 April 2013. The entitlement to claim any outstanding residue or writing down allowance will also cease.

Land Remediation Relief

Despite also being listed in the OTS's abolition report and following the consultation responses, the Government has decided not to abolish Land Remediation Relief. This valuable tax relief provides investors and developers with an enhanced corporation tax deduction for the remediation of contaminated land or buildings. Such contamination includes the removal of asbestos or other harmful toxins, the eradication of Japanese Knotweed or the purging of a site from prior industrial use (which includes removing concrete pilecaps, basements or foundations).

Conclusion

Property investors and owners will be more than accustomed to regular changes in the capital allowances regime and similar reliefs over the past five years. Indeed, whilst many smaller tweaks have occurred, several encapsulating changes have also been enforced and the announcements placed within Finance Bill 2012 surely fall somewhere in between.

The Government will face criticism that the Enterprise Zones are nothing more than a short term gimmick without real substance and whilst they agreed to retain Business Premises Renovation Allowances and Land Remediation Relief, they did not retain the Flat Conversion Allowance scheme to further assist regeneration.

Final criticism should also be faced with respect to the previous promise by the Coalition Government to provide comfort and certainty to taxpayers throughout the term of Parliament. Taxpayers and advisors may seek solace from the fact that the consultation process appears to have merit, but the flip-flopping between proposals does not make a tax life any more certain...

