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Features not fixtures – Greater problems of definition

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Features not fixtures, AIAs, Payable payable ECAs, green cars and the *Weatherspoon* case increase pressure of definition for the tax adviser and taxpayer.

Contrary to some hype, the 2008 budget has not simplified capital allowances for practitioners and the entrepreneur. It would appear that both tax planning and tax compliance have become more complicated as a result of the changes.

The key is understanding the importance of integral features (not fixtures), enhanced capital allowances (ECAs), the Annual Investment Allowance (AIA) and the abolition of both Industrial Building Allowances (IBAs) and Agricultural Building Allowances (ABAs). There is a plethora of tax planning opportunities for the adviser but the interaction with the client/taxpayer to ascertain exactly what has been spent (and what can be spent) appears that it might be complex. Are the tax adviser and taxpayer suitably prepared?

I. "Integral features not fixtures"

The previous capital allowances system gave a writing down allowance (WDA) at 25 percent a year for expenditure on adding thermal insulation to an industrial building. From April 1, 2008 (for corporation tax) or April 6, 2008 (for income tax) WDAs have been extended to expenditure on the thermal insulation of all existing buildings, used for any qualifying business purpose, other than residential property businesses. However, allowances on all such thermal insulation will, in future, be restricted to the new 10 percent "Integral Features" rate.

At the risk of over-emphasis, the name of the new category has been changed from "Integral Fixtures" to "Integral Features" to reflect the fact that not all of the items falling within it will be fixtures. The new rules have also been extended to structures as well as buildings. The government is proposing that there will be a defined list of "Integral Features" and this currently comprises the following assets:

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- Electrical systems (including lighting systems);
- Cold water systems;
- Space or water heating systems, powered systems of ventilation, air cooling or air purification and any floor or ceiling in such systems;
- Lifts, escalators and moving walkways;
- External solar shading; and
- Active facades.

There are those that would argue that the new proposals more than compensate for the loss of IBAs and ABAs.

II. Payable enhanced capital allowances (ECAs)

The availability of payable ECAs is restricted to companies. This was objected to by many in the response to the consultation document published in July 2007, as it is considered this creates an unfair potential fiscal incentive to incorporation.

It is proposed that the upper limit or "cap" to the amount of payable ECAs is increased to the greater of the total amount of the company's PAYE and NICs liabilities for the payment periods ending in the chargeable period and £250,000.

Clause 76 of the 2008 Finance Bill introduces a further incentive for corporate expenditure on green technologies, where:

- The enhanced capital allowances (broadly providing a FYA of 100 percent) is available on account of green technology spending; and
- The company incurring the expenditure is loss-making; and
- Makes a claim.

It is permitted to exchange the relevant capital allowance creating a loss for a cash payment via a tax credit system, hence the expression payable ECAs.

III. Green cars

Clause 74 of the 2008 Finance Bill extends the 100 percent FYA until 2013 for cars with low CO^2 emissions which, subject to transitional rules, has now become cars emitting less than 110 grams per kilometre from 120.

IV. Dull as a drainage system

With the full impact to the tax adviser of losing IBAs and ABAs and gaining AIAs and ECAs, there is reference back to the *JD Wetherspoon plc v Revenue and Customs Commissioners* case (Spc 659), which was reported on December 21, 2007.

What are the facts of the case?

J D Wetherspoon plc operates a well known chain of public houses. In 1999, the company claimed capital allowances on expenditure totalling £52 million relating to "fitting out" expenditure. Various items were disallowed by HM Revenue & Customs (HMRC) and the matter came before the Special Commissioners.

- Drainage. The whole drainage system had to be amended because the existing system was inadequate for the toilets and kitchens. The Commissioners concluded that the whole cost qualified for allowance.
- Toilet cubicles. HMRC allowed the claim for the toilets themselves but not the cubicle partitions! The Commissioners concluded the cubicles were sufficiently connected to the installation of the toilets and so qualified them for allowance.
- Preliminaries. The Commissioners concluded that the allocation of preliminaries should be as accurate as reasonably possible and where there were lots of relatively small items a pro-rata appointment was reasonable.

V. The carrot to the taxpayer places pressure on the adviser

The suggestions do place a lot of pressure on the tax adviser/accountant. It is assumed that future changes will continue to place such pressures on the profession before and after the work is undertaken/money is spent. The taxpayer must be warned of both the complexity and the cost of the advice and it will continue to place pressure on the preliminary stage before work is carried out. There will also be a strong need for building contractors to provide accurate documentation.

It would appear that these are signs of the "carrot" to encourage businesses to be environmentally friendly and improve the working environment but does this place too much unnecessary pressure on accountancy firms?

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