



## Budget 2010 – Capital allowances commentary

In the last Budget before the general election there were a number of measures which will affect capital allowances for businesses:

- The key capital allowances announcement was the doubling of the annual investment allowance (AIA) for plant and machinery for businesses from the current £50,000 to £100,000. It will have effect for expenditure incurred on or after 1 April 2010 for corporation tax and 6 April 2010 for income tax. However, anti-avoidance will be introduced for relevant tax avoidance arrangements entered into on or after 24 March 2010 to disallow property loss relief against general income (in terms of Chapter 4 of Part 4 of the Income Tax Act 2007) to the extent that the loss is attributable to the AIA. The "relevant tax avoidance arrangements" means arrangements where the main purpose or one of the main purposes is the obtaining of a reduction in tax liability by means of a property loss relief against general income, and ones to which the person claiming the relief is party. For businesses with chargeable periods spanning the operative date the maximum allowance is time apportioned for the AIA for the relevant period, e.g. a company with a chargeable period from 1 January 2010 to 31 December 2010 its maximum AIA would be £87,500 ( $3/12 \times £50,000 = £12,500$  for period from 1 January 2010 to 31 March 2010 and  $9/12 \times £100,000 = £75,000$  for period from 1 April 2010 to 31 December 2010). While this measure has to be welcomed, especially for those small businesses looking to invest in plant and machinery, the withdrawal of the temporary 40% first year allowance will limit the benefit for those larger businesses looking at significant investment in plant and machinery;
- The normal tinkering with the list of qualifying technologies in the Enhanced Capital Allowances (ECA) regime has happened and the changes will have effect on and after a date appointed by Treasury Order to be made prior to the summer 2010 Parliamentary recess. The energy efficient scheme list will now include two new sub-technologies: Permanent Magnet Synchronous Motors and Biomass fired warm air heaters, though one existing technology, Compact heat exchangers, and one sub-technology, Liquid pressure amplification, will be removed. In addition, the criteria for taps and showers in the Water Efficient scheme will be tightened and minor housekeeping changes will also be made to the existing criteria for both schemes. ECAs continue to be attractive in NPV terms (up to 30%) with the withdrawal of the temporary 40% first year allowance, as generally these assets would qualify as integral features and only receive the 10% writing-down allowance;

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- Continuing the theme for promoting green technologies, a 100% first year allowance (FYA) for five years expenditure on new, unused (not second hand) zero-emission good vehicles, subject to state aid approval, will be introduced for expenditure after 1 April 2010 for corporation tax and after 6 April 2010 for income tax purposes. This measure was first announced in the 2009 Pre-Budget Report. A zero-emission good vehicle will qualify for the 100% FYA if:
  - It cannot under any circumstances produce CO<sup>2</sup> emissions when driven;
  - It is of a design primarily suited to the conveyance of goods or burden; and
  - The expenditure is incurred on or after 1 April 2010 (corporation tax) or 6 April 2010 (income tax) and before 1 April 2015 (corporation tax) or 6 April 2015 (income tax).

The general exclusions in section 46 Capital Allowances Act 2001 will apply, including the exclusion of expenditure on assets for leasing. There are a number of conditions around the state aid issue that means the FYA will not be available to certain businesses including those:

- In difficulty for the purposes of the *Community Guidelines on State Aid for Rescuing and Restructuring firms in difficulty (2004/C 244/02)*;
- Subject to an outstanding recovery order following a European Commission decision declaring an aid illegal;
- Engaged in the fisheries and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000; or
- Managing waste for other undertakings for the purposes of Directive 2008/98/EC (e.g. a waste collector contracting with a local authority, or large retail business, to provide an integrated waste management service).

Also there will be a cap that limits the amount of expenditure that will qualify for the FYA of €85 million per undertaking over the five year life of the measure and the legislation will contain the rules on how the cap will operate. This measure again confirms the Government's intentions to promote expenditure on green vehicles;

- Further clarification of the legislation to be introduced for the option to elect for alternative treatment under Chapters 3 and 4 of Part 9 of the Corporation Tax Act 2010 (formerly Schedule 10 to Finance Act 2006, for the sale of lessor companies was announced. After discussions with industry changes will be made to the draft



legislation to preserve the entitlement to capital allowances on expenditure in some circumstances and to ensure that the legislation will operate fairly when the lessor company is a controlled foreign company or leases ships into tonnage tax. A further change will address the perceived flaw in the draft that allowed a lessor company owned by a consortium to contrive to end the period during which profits are isolated without the tax timing benefit being recouped in full; and

- Legislation will be introduced in Finance Bill 2010 to treat all leases of cushion gas as funding leases and all expenditure on cushion gas will be regarded as special rate expenditure with a writing-down allowance of 10% per annum. The funding lease provision will apply to leases commencing on or after 1 April 2010, except where there is a contract for the lease before that date, and the contract is unconditional or, if conditional, the conditions have been met and no terms remain to be agreed. The special rate expenditure provision will apply to expenditure incurred on or after 1 April 2010. The measure has been announced so cushion gas leases will fall into the 2006 reforms of long leases (essentially those of more than five years) and ensure the lessor is taxed by reference to the commercial substance rather than the legal form. Any lessee of cushion gas under a funding lease after 1 April 2010 will have the choice of either claiming a deduction for the lease rentals in accordance with the accounting treatment, or of opting to claim capital allowances with a restricted deduction for the lease rentals. The rationale behind the special rate expenditure provision is that as cushion gas does not wear out or necessarily lose value over time, it is considered that the 10% writing-down allowance is more appropriate for this asset.

If you would like further advice in any of the areas above please contact:

Stephen Dunham

Tel: +44(0)118 933 2588

Email: [stephendunham@btconnect.com](mailto:stephendunham@btconnect.com)

Website: [www.dunhamsconsulting.co.uk](http://www.dunhamsconsulting.co.uk)