



## **Pre Budget Report 2009 – Capital allowances commentary**

The Pre Budget Report contained a small number of measures which will affect capital allowances for businesses:

- A 100% first year allowance (FYA) for expenditure on new, unused (not second hand) electric vans, 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, thereby extending the existing incentive for expenditure on low CO2 emission and electric cars;
- Some further changes were set out to supplement the Technical Note published on 21 July 2009 regarding anti-avoidance legislation (draft legislation was also published) to be introduced in Finance Bill 2010 on the transfer of entitlement to benefit from capital allowances on plant and machinery where the tax written down value exceeds the balance sheet value. The anti-avoidance legislation will apply to transfers involving the sale of companies and to transfers involving consortia and partnerships, but will only apply where the transfers are tax motivated. These further changes have effect from 9 December 2009 with the rest of the changes applying to transactions on or after 21 July 2009. While the changes are aimed at purchasers of companies with unclaimed allowances with the main purpose of accessing those allowances, any acquirer will need to consider the legislation and the rules will have to be considered whenever there are relevant excess allowances and changes in ownership are being contemplated;
- A Technical Note and draft legislation concerning the repeal of the Furnished Holiday Lettings (FHL) rules from 2010-11 were published following the original announcement of the repeal of the FHL rules in the 2009 Budget and the publication of a Technical Note on 22 April 2009 regarding furnished holiday properties in the EEA. The legislation is to be introduced in Finance Bill 2010 and means the tax treatment of FHL businesses will be the same as for other property businesses. For income tax the withdrawal will have effect for profits and losses after 6 April 2010, for capital gains tax the withdrawal will have effect for disposals on or after 6 April 2010 and for corporation tax

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the withdrawal will have effect for profits and losses arising in accounting periods starting on or after 1 April 2010 and for capital gains on disposals on or after 1 April 2010. Capital allowances will not be available for expenditure incurred on or after 6 April 2010 (or 1 April 2010 for companies) but instead FHL businesses may claim the 10% wear and tear allowance. Assets within a FHL capital allowance pool at the date of repeal will be transferred to the relevant property business pool at their written down value and continue to be available in the property business with no deemed disposal and reacquisition at market value. Therefore, notwithstanding arrangements to counter the other tax effects of the repeal, it is vital that businesses seek to maximise their entitlement to capital allowances prior to the repeal date to ensure that they carry forward the maximum level of capital allowances into the relevant property business going forward;

- Additional specific anti-avoidance measures regarding plant and machinery leasing were announced, including draft legislation, to counter arrangements where a lessor sells rental income representing substantially all of the value of the asset whilst outside the charge to UK tax and then enters the UK charge to tax and claims capital allowances or a rental rebate for the full original value of the asset and arrangements whereby a lessor that would otherwise begin to pay profits on its rental income because capital allowances are no longer in excess of rental income sells the income and migrates out of the charge to UK corporation tax to avoid corporation tax arising on the income. The new rules seek to prevent lessors from claiming capital allowances on amounts in respect of income on which the lessor is not subject to corporation tax by restricting allowances to the value of future taxable income plus any residual value; restricting deductions available for rental rebates to an amount equal to the amount of income brought into corporation tax; and bringing in a capital allowance disposal value ignoring any reduction in market value of assets caused by a sale of lease rentals. The rules apply to capital expenditure incurred on or after 9 December 2009, disposal events occurring on or after 9 December 2009 and rent rebates payable on or after 9 December 2009; and
- Two additional provisions concerning companies carrying on a business of leasing plant and machinery to be included in Finance Bill 2010 but with effect from 9 December 2009 were announced. The first is to enable lessor



companies to opt for an alternative treatment when sold to remove the need for the calculation of an immediate charge under the provisions of Schedule 10 FA 2006 but to ensure tax is collected on the profits of the leasing business following the sale. The second is an anti-avoidance provision designed to prevent groups from selling leasing companies without triggering the full Schedule 10 FA 2006 charge. The changes may affect groups with companies which have a business of leasing plant or machinery (for example equipment hire, intragroup equipment leasing companies and in-house vendor finance providers) as well as those looking to purchase and sell such companies.

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

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