

STOP PRESS...

BUDGET 2009 - REAL ESTATE IMPLICATIONS

Stamp duty land tax (SDLT)

- The SDLT “holiday” for residential acquisitions (temporarily increasing the exempt threshold to £175,000) will be extended to 31 December 2009.
- Leasehold enfranchisement relief will be extended to all those who exercise their enfranchisement rights.
- Current reliefs enjoyed by registered social landlords on acquisitions are to be extended to profit-making bodies who qualify as “registered providers of social housing” and the acquisition is funded by way of a public subsidy.

There is to be simplification of the SDLT consequences of acquisitions by tenants under the “Rent to HomeBuy” schemes.

VAT

- The option to tax rules are to be “simplified”. The changes will affect businesses that wish to opt to tax land and buildings in respect of which they have previously made exempt supplies.
- The existing compulsory VAT registration threshold is extended from £67,000 to £68,000 with effect from 1 May 2009.
- As previously announced, the standard rate of VAT reverts to 17½% from 1 January 2010. Anti-avoidance provisions will be introduced to counter schemes that purport to apply the existing 15% rate to supplies made after that date.

Disclosure of tax avoidance schemes

The government is to press ahead with the introduction of regulations extending the SDLT disclosure regime to residential property transactions with a value over £1 million. This will include a mechanism for identifying users of schemes that are disclosed.

The consultation document issued by the Government does not include any discussion of the originally proposed “indirect charge” which was intended to address the use of special purpose vehicles (SPVs) in high-value residential transactions in order to minimise SDLT liability.

Capital allowances

First-year allowances at 40% are re-introduced for one year from April 2009. This will be in addition to the existing Annual Investment Allowance (£50,000) and will be available to businesses of all sizes. New expenditure falling within the main pool of allowances will benefit. “Integral features” and “long-life” assets will not benefit and will continue to receive allowances at just 10%.

Trading losses

Existing one-year trading loss carry-back rules are to be temporarily extended to cover three years. However, the amount of losses available to be carried-back beyond one year is to be restricted to £50,000 (for each of two years).

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Funds

From 1 September 2009, Authorised Investment Funds (AIFs) can elect to be treated as “tax elected” funds, so allowing investors to be treated for tax purposes as if they had invested directly in the fund’s underlying assets. The effect of this is that the point of tax will be moved to the investor (and away from the AIF).

Investors in certain types of transparent offshore entities will have their tax compliance simplified by being allowed to ignore disposals by those entities of underlying assets (effective from 1 December 2009).

A new “offshore fund” definition will be introduced with effect from 1 December 2009, using a characteristics-based approach rather than the current regulatory definition “collective investments scheme”.

A “white list” of transactions that are not trading transactions is to be introduced to give certainty to investors in AIFs (with effect from 1 December 2009).

Real estate investment trusts (REITs)

Anti-avoidance legislation will be introduced to prevent companies qualifying for REIT status where there has been “unacceptable” restructuring in order to meet the REIT conditions (for example where properties are let out by one member of a group to another without the properties leaving the group).

There will be further adjustments to the REIT rules to make the regime work more efficiently. For example, REITs will be allowed to issue convertible preference shares and the “balance of business” test will have a single accounting definition to cover both groups and single company REITs.

Alternative investment bonds

Land asset-based securities issued under alternative investment arrangements are inefficient under the UK tax regime. The aim of proposed new SDLT and capital gains tax reliefs is to ensure that these alternative bonds are subject to taxation equivalence to “normal” bonds.

There will also be capital allowance changes. A person obtaining finance using these bonds will remain entitled to allowances even though the land itself is held by the bond issuer. These changes are due to take effect from Royal Assent.

Landfill tax

From 1 April 2010 the standard-rate of landfill tax will increase by 20% to £48/tonne.

Following the recent Waste Recycling Group case, where the use of materials at a landfill site for engineering purposes did not give rise to a tax liability, changes will be brought in to ensure that such uses of material at a landfill site are subject to tax.

Transfers of income streams

New anti-avoidance legislation will ensure that receipts derived from a right to receive income are taxed as income for income tax and corporation tax purposes. The draft legislation is being amended so as not to catch transfers of income resulting from the grant or surrender of leases.

INCREASE IN BUSINESS RATES TO BE DEFERRED

After being subjected to strong campaigning, the Government has announced that it will introduce regulations allowing businesses in England to defer payment of 60% of the increase in their 2009-10 business rates bills. The deferred amounts will be added to bills for 2010-11 and 2011-12.

The aim of the new regulations is to smooth the effects of the spike in inflation in September 2008.

Non-domestic rates are calculated by multiplying the rateable value of a property by a factor known as the multiplier. Under Schedule 7 to the Local Government Finance Act 1988, the multiplier is increased each year in line with the annual change in the retail prices index from the previous September.

In September 2008, RPI inflation reached 5 percent. It has since fallen to 0 percent and is expected to turn negative at the end of 2009.

For now, businesses should continue to pay the amounts set out in their current bills. Billing authorities will write to business rate payers once the regulations have been made, offering them the option to defer payments. The Government expects the regulations to be in place before the end of July 2009.

The Department for Communities and Local Government has produced a fact sheet that explains the proposals: Business Rates Deferral Scheme 2009-10: Fact Sheet (DCLG).

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LAND REGISTRY FEES TO INCREASE

The Land Registration Fee Order 2009 (2009 Fee Order) has been made and comes into force on 6 July 2009. Although the Land Registry's basic fee structure will remain broadly the same, the 2009 Fee Order will increase fees for registration and information services.

For example, the fee for registering properties worth £100,000 will increase from £100 to £130. For properties worth £1m the fee will go up from £420 to £550. There will also be increases in fees for providing information including searches and official copies.

The Land Registry has acknowledged that the increase in fees is significant but has explained that it is necessary to compensate for the considerable drop in its income as a result of the property downturn.

NEW ENVIRONMENTAL DAMAGE REGULATIONS

The Environmental Damage (Prevention and Remediation) Regulations 2009 took effect on 1 March 2009, bringing in new obligations for landlords, property managers and other professionals including a duty to report any actual or potential environmental damage to a property for which they are responsible. The Regulations are intended to facilitate putting into practice the principle of "polluter pays". The Environment Agency has a statutory duty to identify and take action against those responsible for environmental damage and cleanup costs can now be claimed against polluters without an initial prosecution. The regulations are likely to be used only for the most serious cases of damage

Companies should consider both additional insurance cover and risk management indicatives in the light of the fact that standard public liability policies usually exclude liability for pollution.

PROPOSALS TO AMEND THE LEGISLATION ON ENERGY PERFORMANCE CERTIFICATES (EPCS), DISPLAY ENERGY CERTIFICATES (DECS) AND AIR-CONDITIONING INSPECTIONS

The European Commission has published proposals to amend the Energy Performance of Buildings Directive which covers EPCs, DECs and air-conditioning inspections. UK companies which have only just come to terms with the existing requirements may find that the goal posts are about to change.

The proposals include:

- Changing the threshold for meeting minimum energy performance requirements when a building undergoes major renovation. Currently this only applies to buildings over 1000m². Under the new proposals, the requirements will apply to any renovation where more than 25% of the surface of the "building envelope" undergoes renovation, or where the cost of the renovation attributable to the building envelope or the technical systems (heating, cooling, lighting etc) is more than 25% of the value of the building (excluding the land).
- Reducing the threshold for the display of a DEC by a public body from a building size of 1000m² to a building size of 250m².
- Requiring DECs for all buildings occupied by a public body (subject to the size threshold above), regardless of whether or not the building is regularly visited by the public.
- Requiring EPCs (where already available) to be displayed in buildings over 250m² which are frequently visited by the public (e.g. banks; shopping centres).
- Requiring a property's EPC rating to be stated in all advertisements for the sale or letting of the property.

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The European Commission intends that the proposals be implemented in member states in respect of public authorities by 31 December 2010 and in all other respects by 31 January 2012. It would seem that this timescale is unlikely to be met, particularly given current economic conditions.

Comments on the proposals can be sent to the Department for Communities and Local Government at John.Bryan@communities.gsi.gov.uk

HIPS CHANGES

Changes to the Home Information Pack (HIP) regime affecting buyers and sellers of residential properties in England and Wales, came into effect on 6 April 2009.

From that date:

- The temporary first day marketing exemption was removed. All properties now need a HIP from the first day they are marketed.
- A 'Property Information Questionnaire' (PIQ) must be completed by the seller and included in the HIP. The PIQ provides a summary of information and includes flood risk information, gas and electricity safety, structural damage and parking arrangements.
- It will no longer be permitted for insurance to be put in place to cover missing data in the HIP. This means that all searches must be complete before the HIP is used.

Where a property was on the market before 6 April 2009 and the seller changes agents after that date, there is no requirement to update the existing documents in the HIP or for the PIQ to be included.

MINOR MODIFICATIONS TO BUILDING REGULATIONS

The Building (Amendment) Regulations 2009 (2009 Regulations) came into force on 1 April 2009. The 2009 Regulations and their accompanying guidance provide that:

- The CORGI gas safety accreditation scheme is replaced by a new scheme, run by Capita Gas Registration and Ancillary Services Limited.
- The schemes previously run by The Electrical Contractors Association Limited will now all be run by their specialist subsidiary, EC Certification Limited.

From 1 April 2009, CORGI registration will no longer carry any statutory force and landlords and employers should check that anyone carrying work on gas appliances or flues is registered under the new Gas Safe Register. There is no grace period.

In the commercial sector, failure to check that an installer is registered under the Gas Safe Scheme may mean a breach of the Building Regulations 2000 and Regulation 3 of the Gas Safety (Installation and Use) Regulations 1998.

In the residential sector, as well as a breach of the Building Regulations 2000, residential landlords (including those in the social housing sector) will breach Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 if their regular gas appliance checks are carried out by a person who is not registered on the Gas Safe Register.

The Government has announced that all new homes should use water more efficiently and feature inbuilt protection from hot water scalding in baths. To achieve this, Approved Document G, which amends Part G of the Building Regulations 2000, has been published. The amendments are concerned with sanitation, hot water safety and water efficiency. They come into force on **1 October 2009**.

CARBON REDUCTION COMMITMENT

The Carbon Reduction Commitment (CRC) will apply to a very wide range of large non-energy intensive organisations in the private and public sectors from April 2010.

CRC is a compulsory tradable carbon dioxide-emissions allowance scheme for large non-energy-intensive commercial and public sector organisations. Its purpose is to encourage improvements in energy efficiency and to generate awareness of emissions in large organisations. Organisations with half-hour electricity meter consumption of 6,000 MWh or more per year will be required to take part in the scheme. Failure to comply will result in penalties including monetary fines. It has been estimated that 20,000 organisations will be affected by the scheme in some way.

Under CRC, organisations will have to purchase allowances equivalent to their emissions each year. The overall emissions reduction target will be achieved by a cap on the total number of allowances available to the group of participants.

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Within that limit, however, individual participants can determine the most cost-effective means to reduce their emissions. It is expected that the scheme will achieve emissions reductions of at least 4MtCO₂ per year by 2020.

In July 2009, the Environment Agency will send out registration packs to all those with half-hour meters. Those who receive these packs will need to provide information on their electricity consumption during 2008. The registration period for participants will run from April to September 2010.

Organisations can register with DEFRA so as to be kept up to date with developments and to receive information on how the CRC scheme will work and what steps to take to maximise performance under the scheme. Registration is at www.defra.gov.uk/carbonreduction

LENDERS TO GIVE OCCUPIERS LONGER NOTICE OF RESIDENTIAL POSSESSION PROCEEDINGS

From 6 April 2009, a lender who claims possession of residential property on account of mortgage arrears will have to send written notice to the occupiers of the property within five days of being notified by the court of the possession hearing date.

14 days' written notice of a possession hearing is currently required under the Civil Procedure Rules 1998. According to the Council of Mortgage Lenders, the change will mean that occupiers should receive around five to seven weeks' notice of the hearing date. This should give occupiers sufficient opportunity to seek advice and find alternative accommodation.

LAUNCH OF HOMEOWNERS MORTGAGE SUPPORT SCHEME

On 21 April 2009, the Prime Minister announced the launch of the UK Homeowners Mortgage Support Scheme (Scheme), which is now available to borrowers.

The Scheme is designed to give breathing space to homeowners suffering from a temporary loss of income. Eligible borrowers will be able to reduce their monthly mortgage interest payments for up to two years without being at risk of losing their home during that time.

In a separate press release, the Government has identified the banks, building societies and specialist lenders who have confirmed that they will offer the Scheme to their customers. These lenders will have the security of a Government guarantee if any borrower defaults. A number of other high street lenders have confirmed that they will offer comparable arrangements to the Scheme, while not taking up the Government guarantee. According to the press release, lenders covering more than 80% of the mortgage market will now be providing enhanced support to their customers.

The Prime Minister's announcement follows the European Commission's approval of the Scheme under European state aid rules. The Government will continue to work with smaller lenders to encourage them to either offer the Scheme to their customers, or put comparable arrangements in place.

EQUALITY BILL 2009 PUBLISHED

The Equality Bill 2009 received its First Reading in the House of Commons on 24 April 2009. Following its passage through Parliament, the Bill is expected to receive Royal Assent in the spring of 2010, and to come into force in autumn 2010.

The Bill creates a single Act covering all forms of discrimination and is intended to harmonise, simplify and improve the existing discrimination legislation currently in force in Great Britain. The Government has also published a White Paper, "A Fairer Future – The Equality Bill and other action to make equality a reality", which explains what the Bill is designed to achieve.

The new legislation goes beyond that which already exists and includes the following:

- **Extension of duties with regard to common parts in leasehold and commonhold properties**

In the White Paper, the Government states that the Bill will make it easier for disabled people who live in homes with common areas, like hallways and stairs, to be able to use these areas. Clauses 31-35, in Part IV of the Bill, will place a new duty on landlords, commonhold associations and managers of residential properties to make alterations for disabled people where it is reasonable to do so.

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- **Disability discrimination**

Clause 14(1) of the Bill attempts to recast the concept of disability-related discrimination to avoid the unwanted consequences of the decision in a recent case brought under Part III of the Disability Discrimination Act 1995 which concerned a housing authority's decision to evict a schizophrenic tenant who had unlawfully sublet his flat.

PROPOSALS TO TIGHTEN UP BUY-TO-LETS

Reforms outlined in a Green Paper issued in May 2009 mean that all private landlords will have to be registered before letting residential property. Private landlords will have to pay £50 to register with a national body which will adjudicate complaints made by tenants. Landlords who fail to register could face criminal proceedings and have a notice served on their properties stating that tenants do not have to pay rent.

LIFETIME OF PLANNING PERMISSIONS - CONSULTATION ANNOUNCED

The Department for Communities and Local Government has announced that, in summer 2009, it will launch a consultation on proposals to reinstate the time period for the lifetime of planning permissions to five years. The period was reduced from five years to three years, with effect from 24 August 2005, by the Planning and Compulsory Purchase Act 2004.

This article offers general guidance, it reflects the law as at June 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

For further information, please contact:
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