Guide to commercial property taxation

Moving forward together

Whether you are selling commercial premises or have a buy-to-let portfolio of commercial properties, the issue of taxation will not be far from your mind.

Tax is... well, taxing! It's a complex subject and the constantly changing regulations can easily trip up the unwary.

To help you navigate your way through some of the confusing tax issues which you need to be aware of when acquiring or disposing of property, we have produced this guide which highlights changes which have either already come into force or are on the horizon.

Indexation allowance freeze

Indexation allowances are currently frozen. This tax relief previously allowed companies to write off the inflation from the value of an asset when it is sold. As things stand, there is no relief for any increase in an asset's value in relation to any inflation after 1st January 2018.

One option open to corporate investors, is to 'bank' any Indexation Allowance already earned, to avoid possibly losing this in the future.

Sale of shares

New regulations mean that any share disposals now have to be reported to HMRC. The rules require any professional intermediary – solicitors, accountants, bankers and financial advisors – to make a declaration to HMRC regarding share transactions. This includes any offshore transactions.

Stamp Duty Land Tax (SDLT)

SDLT is payable based on "chargeable consideration" which includes cash, the redemption of a debt, the value of certain works and, where a transaction is between "connected parties", can even be the market value where no money actually changes hands. The time for an SDLT return to be submitted and any tax paid is up to 14 days for all transactions whose "effective date" falls on or after 1st March 2019.

It is vital that the cost of SDLT is factored in when considering the necessary funding in order to be able to proceed with a transaction.

VAT – option to tax

It is important to be aware that where VAT is to be paid on the purchase price for a property, the ability to recover it may be dependent upon the buyer having made an 'option to tax'.

VAT might be chargeable by a seller for a number of reasons, including the need to do so having been triggered by their having opted to tax so as to be able to reclaim VAT on construction costs, repairs or other significant works. Once the option to tax is applied, VAT must then be charged on any sale or letting. You should investigate the VAT position at the earliest opportunity so that you can receive advice from your solicitor and accountant on the implications for you, your transaction, timing and cash flow.

VAT – Transfer of a Going Concern

When purchasing business or tenanted property you should also consider whether the transaction comprises a Transfer of a Going Concern (TOGC) which does not generally require VAT to be paid on the price providing that the right procedure is followed, and SDLT savings (as SDLT is chargeable on the purchase price plus VAT (where applicable).

Capital Allowances

When selling or buying commercial property it is important, as a first step, to assess available allowances, determine any “pooling” that may have to be arranged and then determine how the allowances are to be shared between seller and buyer.

As things stand, if available allowances are not pooled by the date of completion, those allowances are lost to a buyer forever with potentially expensive consequences.

Non-resident Capital Gains Tax (CGT)

If you are not a UK resident, you need to be aware that new rules will soon mean you will pay Capital Gains Tax on UK commercial property (residential property is already subject to CGT). The new regulations come into force in April 2019. Sales relating both to properties and shares in 'asset-rich' companies will be taxed from this date – even if they are offshore transactions.

Making a zero-rated supply

The creation of a zero-rated supply, in relation to residential developments, can be a useful method of mitigating VAT. However, bear in mind that an application can only be made by the 'person constructing/converting' and can only be made once. 'Dev Co' structures are an attractive structure for property investors as this also allows the creation of a zero-rated supply.

Design and build VAT savings

It's worth exploring design and build as an option as professional fees can be zero-rated. Another option to consider is a separate 'Build Co' which may provide tax savings.

Before making any changes for tax purposes, it is important to seek specialist legal and financial advice as the rules can vary greatly, depending on individual circumstances.

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