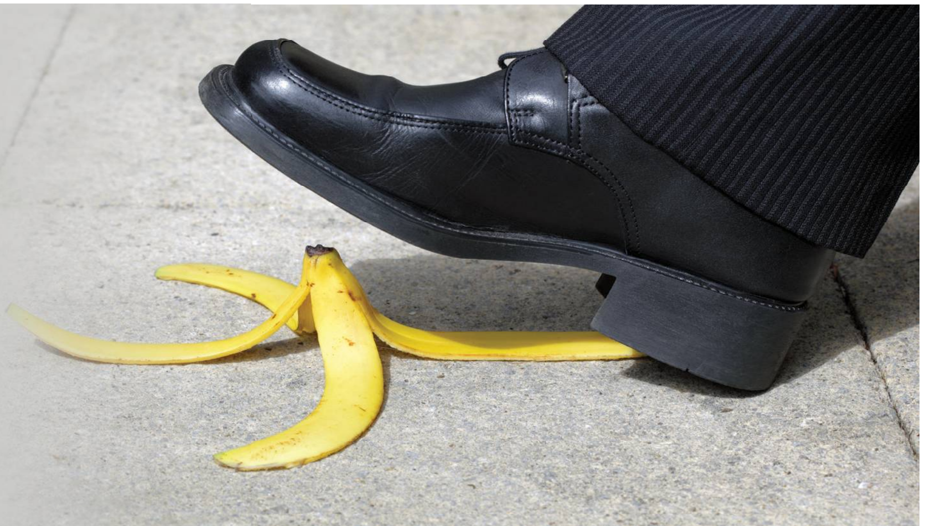
> "A firm grasp of all of the legislation affecting this area is required to be able to avoid the pitfalls and deliver the best possible outcome to your clients"



TAXING MATTERS

Andrew Stanley, Managing Director, STax, on capital allowance changes affecting the commercial sector

Conveyancers of commercial property need to be aware of the massive shake up in the capital allowance rules or run the risk of a serious slip up.

The Finance Act 2012 brought in sweeping changes to how capital allowances are dealt with during a sale. Many solicitors are not aware that they may have a duty of care to provide for this area as it is an intrinsic component of a commercial conveyance. Being a tax matter is immaterial (if you disagree see Clarke v Iliffes Booth Bennett [2004]). We would envisage that if put to the test the conveyancer's duty of care is likely to extend to capital allowances for a commercial property and even possibly multi-unit residential as well.

There has been very little press coverage of the new system leading to many engaged in commercial conveyancing having not had the full impact of these changes communicated to them. This suits the Treasury's purposes as noncompliance means a complete loss for both buyer and seller and a net gain to the Exchequer.

To rewind a little, capital allowances are a form of tax relief given on qualifying items of plant and machinery. This extends to many fixtures in a commercial building (and some multi-unit residential ones) like the plumbing, electrics, security system and fire alarms to name a few. In even the smallest of freehold transactions you can be talking about hundreds of thousands of pounds of tax relief.

So what are the changes [CAA2001 s187A & s187B]? Broadly the changes enforce the correct handling of the transference of allowances. It is formed of two core components:

1.) Fixed Value requirement - Since April 2012

From April 2012 if a transfer value (disposal and acquisition) is not fixed for fixtures that the vendor has claimed, by a s198 election (or decision at tribunal), then the qualifying expenditure for the purchaser will be set to NIL on these items. This is binding on all future owners, which will not only lose the buyer all right to claim allowances on their expenditure but almost certainly devalue the property overnight.

Furthermore, HMRC are within their rights to impose a disposal value (generally market value at sale in most cases) against the vendor's pool. This would effectively claw back previously given allowances, leading to a potential tax charge on the vendor and of course a permanent mismatch in the Treasury's favour.

2.) Mandatory pooling - Since April 2014

In April 2014 pooling (assessing, valuing and claiming) of allowances prior to sale by the vendor became mandatory. This works in conjunction with the Fixed Value requirement detailed above. So with both in operation anything not quantified, claimed and then transferred in a 100% correct manner will be lost forever!

A firm grasp of all of the legislation affecting this area is required to be able to avoid the pitfalls and deliver the best possible outcome to your clients. So if you are involved in commercial and/or larger residential conveyancing you should take action now to protect your clients' and your firm's interests. This can be done by either getting fully up to speed with this area or alternatively arranging for a specialist, like us at STax, to provide expert advice on relevant transactions.

STax are industry leading real estate tax advisers. Combining qualified tax advisors, accountants and quantity surveyors makes STax perfectly positioned to advise on this and any other real estate related tax matter.

For further information about these changes contact STax on 0207 147 9940 or alternatively contact Searches UK at info@searchesuk.co.uk or visit our CPD page at www.searchesuk.co.uk for forthcoming CPD events with Andrew Stanley (MD of STax).

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