



PROPERTY INSIGHT WINTER 2010

INSIDE Keeping it “real” with principal private residence ■ **Collective investment structures- and how to choose** ■ Collecting stamp duty ■ **Sapping our energy** ■ Capitalise on allowances





IN THIS ISSUE

Thank you so much for all your positive feedback on the last edition of Property Insight. Please do keep your comments coming in – positive and negative as this is your publication and we need to keep the content fresh and engaging for our readers.

IN THIS issue we will be delving in to many pertinent issues relevant to the property sector. Some of you may have heard that on 1st October a new regulation relating to Standard Assessment Procedures was introduced. It is now very important for all new build properties to be assessed and be SAP compliant.

On page 6 we get to know Richard Turner, Menzies Stamp Duty and Land Tax Specialist. Richard imparts some useful pearls of wisdom, as he talks about the implications of the new higher SDLT rate, effective from 6th April 2011.

If you're wondering how to choose the best collective investment structure, then turn to page 4. Richard Godmon, Specialist Tax Partner runs through certain factors that need to be taken into account when considering collective investment, to ensure you hold the property in the most beneficial way.

I hope that has whetted your appetite for some of the interesting features we have in this edition of Property Insight. So read on, enjoy and as always please give me your feedback!

'Till next time

The Menzies Property Team

Many thanks to:

Sara Davies
Salvador Amico
Richard Godmon
Richard Turner
Chris Doyle
Debbie Searle

“If you are fortunate enough to achieve real occupation for more than one property, forward planning is vitally important.”

KEEPING IT “REAL” WITH PRINCIPAL PRIVATE RESIDENCE

HMRC are starting to look more closely at claims for Principal Private Residence (PPR) relief. The notion of moving into a property for a short space of time - for example one week – and claiming that you lived in the property, are long gone.

THE OCCUPATION must be “real”, but this can be somewhat difficult to understand.

It is not necessarily the length of time that the property is occupied, but the quality of the occupation, that determines whether the occupation is “real”.

If for example a property were for sale throughout the period of occupation, the occupiers would be classed as “temporary” not “real”.

Advice?

If you are fortunate enough to achieve real occupation for more than one property, forward planning is vitally important.

Our advice would be to submit an election for a property to be your Principal Private Residence within two years of acquisition of the second property.

Even if you purchase a second property with the intention of letting it out, you should still submit an election for your home to be your only or main residence - this will provide you flexibility in the future, if circumstances change.

Evidence to support your claim if no election has been submitted

In the absence of an election, the deciding factor would be the quality of occupation. In

other words, which property is home and which is just a temporary base.

The following are examples of useful evidence that should be retained, the more evidence you have the better:

- Bank statements addressed to you at the property;
- Registering for council tax in your own name as occupier;
- Registering for water rates in your own name;
- Registering for electric services in your own name;
- Registering for gas services in your own name;
- Re-registering passport and driving licence in the new address;
- Getting put on the Electoral register for the address;
- Other personal mail addressed to you at the address.

For further information please contact your local Menzies Property Sector Specialist (see the back of this publication).



Steve Mitchison
Property Specialist
Leatherhead Office



Richard Godmon
Corporate Tax Partner

COLLECTIVE INVESTMENT STRUCTURES – AND HOW TO CHOOSE

Over recent months, private investors have been returning to the property market despite the gloomy outlook. Many of these investors are pooling resources to give them stronger buying power in the market and to reduce their overall risk.

THERE are many business structures and entities that investors can use to acquire their property investment. However there are pros and cons to some of the collective investment structures that could be used.

Certain factors need to be taken into account when considering collective investment, to ensure you hold the property in the most beneficial and practical way:

1. Transferability of investment

- Is the stake owned in the collective investment structure easily transferable, eg. investment funds?
- Is it desirable to place restrictions on transferability of the investment held, eg. limited company or partnership?

- Is there a means of exit, and how easy is it to realise your investment?
- Is it desirable to have a pre-determined life for the vehicle?

2. Membership

- Can you control who your fellow investors are?
- Do you want to be investing with the general public?

3. Flexibility

- Can the vehicle accommodate specific investor requirements, eg. partnerships can be tailored to meet individual partner wishes, such as profit shares, whereas limited

“Certain factors need to be taken into account when considering collective investment, to ensure you hold the property in the most beneficial and practical way.”

company minority shareholders may have limited input into structure?

- Can you influence the investment policy?

4. Regulation

- How are the affairs of the vehicle regulated, eg. limited company by memorandum and articles of association?
- What is the level of the administrative and regulatory requirements? For example, regulated vehicles carry more obligations, but have more security and less risk.

5. Taxation

- Is the entity subject to tax in its own right, eg. limited company, which can result in two levels of taxation; or is it transparent for tax purposes, eg. partnership, which is attractive for low tax or tax exempt investors?

6. Familiarity

- Is the vehicle familiar to the investors and commercially well understood, such as limited companies? This is by comparison to Limited Liability Partnerships (LLPs) which are relatively new in the context of property investment.

This table indicates which investment structure best reflects the above five factors, giving three ticks for the most favourable. Clearly, this will need to take into account specific circumstances, but when considering collective property investment it may help focus on which way forward.

If you're looking to invest in the property market, contact one of our property specialists for detailed advice on choosing an appropriate structure.

FACTORS

Investment Structure	Transferability <i>How Easy?</i>	Membership <i>Can you control?</i>	Flexibility <i>Can you influence?</i>	Regulation <i>Level of Regulation</i>	Taxation <i>Transparent, Tax breaks, etc?</i>	Familiarity <i>Well understood?</i>
Limited Company	✓	✓✓✓	✓✓✓	✓✓	✓	✓✓✓
Partnership	✓	✓✓✓	✓✓✓	✓✓✓	✓✓	✓✓✓
Limited Liability Partnership	✓	✓✓✓	✓✓✓	✓✓	✓✓	✓
Authorised Investment Fund	✓✓✓	✓	✓	✓	✓✓	✓✓
Unauthorised Unit Trust	✓✓✓	✓	✓	✓✓	✓	✓✓
Real Estate Investment Trust	✓✓✓	✓	✓	✓	✓✓✓	✓





Richard Turner
Stamp Duty and
Land Tax Specialist

COLLECTING STAMP DUTY...

On 6th April 2011 there will be a higher Stamp Duty Land Tax rate of 5%. This month PI decided to interview Richard Turner, Menzies' SDLT expert to find out what impact this might have.

PI: SDLT is a very prescriptive piece of tax legislation. What should clients do to minimise their exposure to SDLT?

RT: It is important to be clear about what you intend to do with the property after you've bought it as this may affect the particular vehicle or structure to be used.

The SDLT consequences of transactions are sometimes given little consideration and therefore getting the right advice early on is essential.

PI: There is a new higher rate of SDLT at 5% that will become effective from 6th April 2011. Is there any advice you would like to offer?

RT: Again, it is a case about having the correct structure in place for the transaction. Making use of all available reliefs or in the absence of a tax efficient structure or statutory relief our clients may consider a tax avoidance strategy.

Tax avoidance strategies are legitimate methods of mitigating tax by making use of loopholes in the law. They have to be registered with HMRC and are reported to HMRC on the land transaction return.

PI: What do you see as the future for SDLT; will rates continue to increase or will it be abolished for something new?

RT: In the future SDLT will hopefully become more progressive, rather than operating on a slab system as it does

now. Although due to the current economic conditions, it is unlikely that this will happen in the short to medium term.

Instead I would expect there to be a greater emphasis on enforcing compliance and further tightening of the anti avoidance legislation.. It is therefore important to ensure you have an advisor that keeps on top of the latest strategies.

PI: Where can your clients find out more about the latest strategies?

RT: Clients should contact their local Menzies expert, as methods are continually changing. Also they should speak to their usual Menzies contact sooner rather than later, because by the time contracts have been exchanged it will already be too late.

PI: Do you have any examples of cases where you have helped a client with SDLT planning and compliance?

RT: Planning advice is always given pre - transaction. Typically this could be in relation to the structure or transaction i.e. should the purchasing vehicle be a company, partnership or trust and how should the contract itself be structured (especially in relation to property development businesses). The choice will of course depend on what you plan to do with the land/property afterwards.

“In the future SDLT will hopefully become a more progressive tax. Due to the current economic conditions, it is unlikely that this will happen for the next 5 years.”



Prior to the Con-Dem budget this year, there was a widely predicted capital gains tax increase. My client had a property on the market and some interested buyers, however none of them had made a firm offer prior to the budget. By using a trust, we were able to trigger a capital gains tax disposal and were able to do this and without an SDLT liability arising.

Ultimately the vehicle used or structure of any transaction tends to be driven by commerciality and therefore I am usually left in a position whereby I must try to mitigate SDLT charges, by making sure that we claim any available reliefs.

For instance one our builder clients was trying to sell a newly developed property and had an interested buyer, but the deal was going to collapse because someone further down the property chain had pulled out. Under these circumstances the builder was able to exchange his property for his purchasers without an SDLT charge arising.

If we are restricted in the ways to structure the purchase in an SDLT efficient manner, I may also refer our clients to a London barrister that we work closely with, to consider a more aggressive approach to planning.

With regard to compliance, I am able to provide my clients with an analysis of their property/share transactions ensuring they comply with the law, and pay the correct amount of tax.

In a similar vein, because of the complex nature of the SDLT legislation, I provide due diligence on mergers and acquisitions to ensure that businesses have been complying with the law.

JARGON BUSTER

STAMP DUTY. Payable by the purchaser on share transactions at 0.05% of the purchase price.

STAMP DUTY LAND TAX (SDLT). Payable by the purchaser on property transactions between 1 - 4% (5% from April 2011) of the purchase price.

SDLT AVOIDANCE SCHEME. A scheme devised by tax lawyers (usually with backing of tax council), reportable to HMRC under the Disclosure of Tax Avoidance Scheme Legislation.

SDLT GENERAL ANTI AVOIDANCE LEGISLATION. Legislation designed to defeat schemes that HMRC consider to be artificial. Although much of this legislation has been constructed in such a way that could potentially disadvantage those that enter into transactions with no tax avoidance motive whatsoever, many commentators have described the approach as a sledgehammer to crack a nut.





Debbie Searle
Sustainable
Development
Specialist

SAPPING OUR ENERGY

Anyone working in the property industry is almost guaranteed to have heard the recent talk about the Standard Assessment Procedure (SAP), the software that is to be used to calculate compliance with Part L of the Building Regulations, which measures the energy performance of dwellings.

Since 1995, Building Regulations have required a SAP rating on every new home. Therefore everyone owning, building, developing, extending, converting, selling or letting a house is likely to need a SAP rating.

New regulations

Since 2005 SAP ratings have been requisite to property owners, however on 1 October 2010 new building regulations relating to energy performance were introduced. The new regulations mean that SAP will be used to measure the compliance of new build properties.

Government targets

The current Government has set a new target for 2016, ensuring that all new homes should be net zero carbon. It is therefore essential that SAP accurately reflect the actual energy performance of homes.

Concerns

As with most new assessment tools, there are three main concerns surrounding the accuracy of SAP:

- What SAP is measuring has changed and zero carbon homes are different to those measured by the present product.
- If SAP is not up to the job then there is a risk that homes could use more energy than predicted and have higher than expected carbon emissions.
- The latest version of SAP was released on 1 October 2010, despite being called SAP 2009, and so house builders will not have had any time to use the new software to work out how best to implement the new regulations.

Future outlook

The full extent of any potential issues relating to the new version of SAP cannot be verified until there is some user feedback. Nevertheless, SAP is undoubtedly going to be a hot topic for some time to come.

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“It is important to be aware that a claim made by the previous owner of the property, may impose some restriction on the amount of relief available to the successive owner.”

CAPITALISE ON ALLOWANCES

Did you know that a raft of opportunities exist to maximise the available relief on Plant and Machinery? Recent trends indicate that many property owners and investors are missing out on valuable tax relief in the form of capital allowances.

In 2008, HM Revenue and Customs (HMRC) removed large portions of capital allowances tax relief in line with the structural elements of Industrial Buildings, Hotel Buildings and Agricultural Buildings.

At the same time, the rate of relief for General Pool Plant and Machinery was reduced to 20% per annum and 'Integral Features' were introduced, which attracts allowances at 10% per annum.

This may seem somewhat negative for taxpayers, however forward planning of capital expenditure and property investment decisions can produce very positive returns.

Which buildings qualify?

Commercial buildings will qualify for Plant and Machinery capital allowances either as General Pool Plant and Machinery, or Integral Features. The allowances available will depend on the particular tax history and ownership of the property.

It is important to be aware that a claim made by the previous owner of the property, may impose some restriction on the amount of relief available to the successive owner. However, given the statutory changes made in 2008 - the property includes the new Integral Features asset class - it is therefore likely that there may be no historic capital allowances claim. This means that there may be no restriction on the available relief.

The good news is that in our experience many properties have entered the market with full capital allowances potentially available to them.

Advice?

In order to maximise the available tax relief, we advise our clients to raise the issue of capital allowances at the time of the property deal. The purchase documentation can be structured to ensure all available capital allowances are passed on to the new owner. It is also possible at this time to place an obligation on the

Property Type	Acquisition / Disposal Qualifying %
Office	15% - 30%
Retail	5% - 25%
Industrial	5% - 20%
Hotel	15% - 45%



vendor to assist with all necessary historic backup documentation, enabling the new owner to make a full capital allowances claim.

It is vital that these issues are dealt with at the time of the property transaction; otherwise it may prove very difficult to obtain the relevant information to substantiate a capital allowances claim in future when the purchaser's tax returns are due. Dealing with the capital allowances issues early in a transaction can greatly increase the amount of the tax relief available and the value of the final claim agreed with HMRC.

Construction and Refurbishment Projects

Construction and refurbishment projects can greatly impact the quantum and cash flow benefit of tax relief that is potentially available. Here is an indication of the range of capital allowances tax relief available for certain projects.

We encourage our clients to seek specialist advice at the early stages of a construction project, as the design can be engineered to generate greater value from the capital allowances, as well as providing robust support to the final claim.

In 2001, HMRC introduced an incentive for taxpayers to invest in energy efficient and environmentally friendly Plant and Machinery in the form of Enhanced Capital Allowances. Enhanced Capital Allowances are a 100% First Year Allowance for expenditure on specific types and categories of Plant and Machinery. The legislation is very prescriptive, therefore it is necessary to ensure that the underlying Plant and Machinery is correctly specified and procured to secure the relief. If the Plant and

Machinery does not qualify for Enhanced Capital Allowances, then the default position will be Integral Features at a rate of 10% per annum – a considerable difference.

Further tips

Considered planning of the project design can ensure non-qualifying construction elements such as walls, floors and ceilings do qualify for capital allowances. In this case, much will depend on the flexibility and business need of the design. However this can result in a greatly increased level of capital allowances from the project.

The structuring and format of the project documentation can also be engineered to assist with the final production of the capital allowances claim. Three key things to consider are:

- Ensure the contractor provides a detailed cost breakdown of the construction works
- A detailed record of Design Team costs -this ensures the most tax efficient allocation to qualifying construction elements
- Accurate recording of Design Team decisions. This will clarify their business need in relation to contentious construction elements.

All things considered, there are genuine opportunities to optimise the tax relief that is available, but early involvement of a specialist is key.

For further information please contact your local Menzies Property Sector Specialist (see below).

“A detailed record of Design Team costs -this ensures the most tax efficient allocation to qualifying construction elements.”

Property Type	New Build Qualifying %
Office	15% – 45%
Office Refurb/Fit-out	40% - 100%
Retail	5% - 40%
Retail Refurb/Fit-out	40% - 90%
Industrial	5% - 25%
Hotel	15% - 50%
Hotel Refurb/Fit-out	40% - 80%



Left to right: Andrew Denley, Ralph Mitchison, Salvador Amico

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