



Recovery in the housing market

September saw even more reports on the perceived recovery in the housing market. Recent research conducted by Savills suggested that in the quarter to 30 June 2009 the value of the housing market within many boroughs of the South East had risen. Top of the list was Elmbridge, with an estimated increase in values of 4.41% in the quarter. However, this still represented an average drop from peak values of 19.1%.

However, as with all these reports, in the current market there is always an element of caution that needs to be taken on board.

In particular, the severe constraints on accessibility to mortgage finance during the downturn will continue to hinder recovery.

In fact, statistics suggest that the average number of cash buyers in the market as a proportion of total buyers rose from approximately 23% in 2007 to between 36% and 40% in May 2009.

The report also notes that unemployment is not expected to peak until 2010 and that the Government is not expecting significant economic growth until at least 2011. These factors alone may well hinder a sustained recovery in the property market.

So although there appears to be light at the end of the tunnel for the property sector, the real concern and threat to the market is the attitude of lenders to property lending.

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Attention developers:

Menzies LLP is currently in contact with a number of investors interested in lending to property developers. We can advise any client buying residential or commercial property at a value of over circa £500,000, whether for own occupation or the rental market, in relation to possible substantial savings of the stamp duty liabilities arising.

For more information, please contact Head of Property, Salvador Amico on samico@menzies.co.uk or 01483 755000.

In this issue

Revocation of an option to tax
Landlord and tenant VAT update

The future of regional planning?
Capital allowances up for grabs
Stamp Duty Land Tax holiday
VAT rate change – be prepared
Reducing carbs
Property letting opportunities

Revocation of an option to tax

Those landlords and property owners who have held properties for 20 years or more should be reviewing the VAT status of their portfolio to ascertain whether the ability to revoke an option to tax presents opportunities.

The option to tax was first introduced in 1989 in relation to commercial properties and making an election allows VAT recovery on construction or refurbishment costs. An option can be revoked where more than 20 years have elapsed since it first had effect. This year is therefore the first time this can be considered. One of the advantages of revocation is that removing the need

to charge VAT may make a property more marketable to purchasers or tenants in the financial services, education, healthcare and charity sectors. It can also reduce Stamp Duty Land Tax (SDLT) as SDLT is payable on the VAT inclusive price, potentially allowing the vendor to negotiate a more favourable price.

Before making a revocation, advice should be sought to ensure that there are no ramifications that need to be considered. For example, if refurbishments with a net value of over £250,000 have been carried out in the last 10 years, some of the VAT claimed would need to be paid back to HMRC under the capital goods scheme.

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Landlord and tenant VAT update

A recent decision of the European Court of Justice, RLRE Tellmer Property s.v.o means that services such as cleaning the common parts of a block of flats could be viewed as subject to VAT, even if the rent under the lease is exempt. This decision may, therefore, impact landlords of residential apartment blocks and un-opted commercial properties.

Although the case concerned cleaning, the same principles could apply to any services needed to support communal areas, for example, maintenance, gardening, reception or switchboard services.

In the UK, HMRC's current guidance indicates that service charges relating to the upkeep of common areas of an estate of dwellings, or the common areas of a multi occupied dwelling are ancillary to the main supply of exempt domestic accommodation

and so also exempt, so long as they are required to be paid by the leaseholder or tenant to the landlord under the terms of the lease or tenancy agreement. This guidance is unlikely to stand following the Tellmer decision and it is understood that HMRC has asked counsel to consider the implications of the decisions.

In its reference to the ECJ, the Czech Court raised concerns about the social implications of the decision, as the addition of VAT on the cleaning costs could increase the cost of domestic rentals. This is also likely to be considered by HMRC.

The ECJ restricted its decision by including the words 'in the circumstances such as those at issue'. It seems to have considered that the fact that the service charges were invoiced separately and the fact that they could have



The future of regional planning?

The Conservative Party has recently outlined its proposals for the abolition of Regional Planning should it win next year's General Election:

"A Conservative Government will abolish the bureaucratic and undemocratic tier of regional planning. This will include the abolition of the Regional Spatial Strategies (RSS) and the Regional Planning Bodies, the abolition of national and regional building targets, as well as the cancellation of the Labour Government's plans to move the regional housing and planning powers to Regional Development Agencies and Regional Leaders' Boards. Prior to primary legislation, we will consider whether to use the executive powers of the Secretary of State to revoke the Regional Spatial Strategies in whole or in part."

been supplied directly by a third party to the tenant as important in determining that the supplies were separate and this could limit the wider application of the decision.

It is the opinion of some that the case presents an opportunity for landlords to recover unclaimed input VAT on the costs of communal services previously treated as exempt. However, each scenario would need to be considered on its merits as if the VAT cost has been passed onto the tenants there may be no advantage to pursuing this.

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Capital allowances up for grabs

In today's economic environment, managing cash flow is increasingly important. Failure to have a professional review your property acquisitions may result in you not claiming tax relief at the earliest possible opportunity on your property purchase.

Following the introduction of the integrated features legislation and environmentally beneficial plant & machinery allowances, potential claims are abundant as ever.

The secret is to ensure that any review is undertaken by a tax expert who is also a chartered surveyor, so that robust advice regarding what qualifies for capital allowances can be ascertained.

Whether you are a trader or a landlord you may be able to benefit from a capital allowance claim on your property acquisition, which can amount to substantial sums. For instance care homes, hotels and restaurants may be able to claim allowances worth up to 30% of the property acquisition cost.

Professional fees charged for undertaking a capital allowance review can be based on a percentage of savings made.

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Stamp Duty Land Tax holiday

On 1 January 2010 the temporary increase in the 0% band of Stamp Duty Land Tax (SDLT) to £175,000 will come to an end, and will revert to the £125,000 level for a residential property purchase. Whilst many in the South of England would not have felt the benefit of the increase, this is a saving opportunity that should not be missed by first time buyers and property investors.

We are aware of a number of tax planning opportunities that will help to mitigate SDLT for residential property transactions with a value of over £700,000 and commercial property acquisitions of over £2m.

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VAT rate change – be prepared

The VAT rate returns to 17.5% from 1 January 2010. For those businesses involved in the continuous supply of services such as construction contracts or commercial rentals to individuals or companies that cannot recover the VAT, they will thank you for ensuring that the higher rate is not paid on supplies made before the change. An obvious point, but ensure that VAT invoices are raised for the period to 31 December before the end of the year. There may also be some scope for pre-payments at the old rate but there is anti-avoidance legislation in place so it would be prudent to check that this is possible before proceeding.

Reducing carbs

Government representatives and developers met in early August to discuss and explore ways of simplifying the assessment process under the code for sustainable homes.

Since May 2008, builders have been required to obtain a carbon emission rating for all new homes before they could be sold. However, since its inception the rating process has proved to be bureaucratic and hampered by a lack of sufficiently skilled assessors. Developers have

been complaining that it has been taking up to six months to get appropriate certificates after submitting data to assessors.

However, there is possible respite for house builders with the news that the UK Green Building Council (UK-GBC) has won support to set up a fund to cover the extra costs of efficiency improvements. The outline proposals would enable builders to recover the cost of achieving high code levels on the erection of new homes. By recovering the costs in this way the sale price of new builds could be kept down, thereby making homes easier to sell.

Within the proposals are included details of a Pay As You Save initiative from the UK-GBC. The initiative aims to establish a mechanism whereby buyers of energy efficient houses would receive bills from local authorities along with their council tax. These bills would cover the cost of extra insulation, or energy generating equipment, as well as an interest payment of 6%-6.5%.

The Government has set a target of making 400,000 homes energy efficient by 2015 and 7 million by 2020.

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Property letting opportunities



Buy to let residential property investment has been in vogue in recent years, and no doubt the enthusiasm for this type of investment will only increase. Property values may fluctuate, but many people see bricks and mortar as the most solid investment they can make.

Two categories

Property letting for tax purposes has in the past fallen into two broad categories: approved short-hold tenancies and furnished holiday lets. Those who have properties let under short-hold tenancies will undoubtedly be broadly familiar with the Income Tax rules relating to rents received and so these are not detailed here, but instead we offer a brief outline of some tax planning opportunities in relation to the capital value in the properties.

The rules relating to furnished holiday lets have in some respects been broadened by the 2009 Budget proposals and in other respects curtailed. Some of the changes are important and we will outline the significance of them and the opportunities which there are in the run up to 5 April next year, when a transitional period relevant to these lettings will expire.

Approved short-hold tenancies

If a sale of a property, let since acquisition on short-hold tenancies, is envisaged at a future time, any profit realised over the acquisition cost will represent a gain chargeable to Capital Gains Tax at 18%.

It is sometimes possible to make a reasonable impact on the chargeable gain after the last tenant leaves by electing for the property to be your main residence. This is not totally straightforward and it is essential to use the property as one of your residences

for several months, or the claim will be refused by HM Revenue & Customs.

Those not planning a sale of a property in the future, but instead planning to keep the asset indefinitely for the benefit of the family, may wish to consider some estate planning with the value in the property. Simply giving away the property to the next generation will amount to a disposal for Capital Gains Tax purposes and the gain to date will be brought into charge to tax. It is possible to 'hold over' the gain (i.e. elect for the transferee to take the property at your original acquisition cost), by passing the property through a family discretionary trust from which you or your spouse cannot benefit.

Alternatively, if paying tax on the gain is manageable, a substantial share in the property can be placed into a family trust in which you and your spouse can benefit. Under this arrangement, you retain the rights to receive the rents in the future, but the capital value in the share in the property is given away as a lifetime gift and so passes out of your estate for Inheritance Tax purposes.

Furnished holiday lettings

Those who have properties let as holiday accommodation will no doubt be familiar with the broad requirements for the special reliefs which can be claimed for both the income from, and the capital gains arising on, such properties. Very briefly, a let should not normally be for more than 31 consecutive days, and there should be actual letting for at least 70 days and the property should be available for 140 days in the tax year.

In the past, the rules have not applied to properties outside the United Kingdom. It has now been recognised that this restriction is incompatible with European law and the special rules for UK holiday letting will be discontinued from 6 April 2010.

The existing tax reliefs can be summarised as follows:

1. If the letting in any year produces a loss, that loss can be relieved against any other type of income for the same tax year, or the previous tax year (subject to satisfaction of a commerciality test with the lettings overall).
2. The income counts as earned income against which pension premiums, for example to a SIPP, may be deducted.
3. If the property is sold realising a capital gain, this may be taxed at the beneficial rate of 10% cent under the entrepreneurs' relief provisions in place of the normal 18% cent rate.
4. Alternatively the capital gain realised on disposal may be 'rolled over' into the acquisition cost of another asset used for the purposes of some other trade, or another property for furnished holiday letting.
5. If the property is given away, say to the next generation, the capital gain which is treated as realised by the gift is eligible for 'hold over relief'.

All the above reliefs will cease to apply from 6 April next year and so there is the last opportunity to take advantage of them in the remaining months up to that date.

Those who intend to keep furnished holiday lets in the long term, notwithstanding the changes in the rules, and who have plans for refurbishment work at the property, should consider having the work carried out during the current tax year. This is because if the expenditure results in a loss for tax purposes this year, this last opportunity may be taken for that loss to be relieved against other income.

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