SQUIRE SANDERS

BUDGET OF 21 MARCH 2012: REAL ESTATE

Yesterday's Budget announced a number of changes which are important to our real estate clients.

Corporation Tax

The main rate of corporation tax was due to be reduced from 26 per cent to 25 per cent from 1 April 2012 and 1 per cent each year thereafter until it reached 23 per cent in 2014/15. Yesterday, the Chancellor announced an additional 1 per cent cut, so that the main rate of corporation tax will be 24 per cent from April 2012 and will now fall to 22 per cent by 2014/15.

Income Tax

The Chancellor announced that the top rate of income tax will be reduced from 50 per cent to 45 per cent from April 2013.

Capital Gains Tax

From April 2013 (and following consultation on the detailed measures) capital gains tax will be extended to cover gains on the disposal of UK residential property by non-resident, non-natural persons, such as companies.

Stamp Duty Land Tax (SDLT)

A number of changes to SDLT were announced in the Budget.

- As was widely predicted by the press, a new higher rate of SDLT of 7 per cent will apply to purchasers of residential property where the consideration is over £2 million. This will apply from today.
- In addition, as an anti-avoidance measure to stop people transferring high value properties into companies (and then selling the shares in the company to avoid SDLT) a rate of SDLT of 15 per cent will apply to purchases by certain non-natural persons, such as companies, partnerships of which companies are a partner and collective investment schemes, of single dwellings where the consideration is over £2 million. This will apply from yesterday.
- Furthermore, the Government will consult on the introduction of an annual charge on residential properties valued at over £2 million owned by non-natural persons, such as companies, partnerships of which companies are a partner and collective investment schemes. It is proposed that the Government will legislate in Finance Bill 2013 for this charge to apply from April 2013.
- The SDLT rules on sub-sales will be amended from yesterday to exclude the grant or assignment of an option from being within the sub-sale rules. It is arguable whether an option was within the sub-sale rules, but this change will put it beyond doubt and is designed to prevent an SDLT savings scheme that was being marketed widely.
- The SDLT Disclosure of Tax Avoidance Schemes (DOTAS) rules will be changed to remove the "grandfathering" of certain avoidance schemes and remove the financial thresholds for notification under DOTAS.
- The abolition of a number of stamp duty and SDLT reliefs following a review by the Office of Tax Simplification. The abolitions will take effect from April 2013.
- Finally, the Government announced that it would carry out an informal consultation with the SDLT working group to simplify SDLT on certain types of leases from 2013.

VAT

Unlike SDLT, there was very little announced in relation to VAT on property. The registration threshold will increase to £77,000 from 1 April 2012. Other than changes to the way in which VAT is levied on self-storage, static caravans and hairdressers' chairs, it was announced that the VAT treatment of alterations to certain types of listed buildings would be changed so that they would no longer be zero-rated and nor would the first supply of a such a building by a developer carrying out a substantial reconstruction of such a building.

Changes to Capital Allowances

The first point to note is that there were no changes to the previously announced reductions in capital allowances. The Annual Investment Allowance will reduce from £100,000 and the writing down allowances for plant and machinery will reduce to 18 per cent for main pool items and 8 per cent for special pool items.

As announced in last year's Budget, expenditure on plant and machinery for which payments of Feed in Tariffs or Renewable Heat Incentives are received will not be entitled to enhanced capital allowances from April 2012. In addition, expenditure on solar panels will only qualify for the 8 per cent special rate of capital allowances from April 2012.

Again, as announced in the 2011 Budget, purchasers of property will only be able to claim capital allowances on fixtures where a new statutory mechanism for fixing the value of the fixtures is followed. This is an important change and one that needs to be considered by all tax payers who own property and claim capital allowances.

It was announced last year that business premises renovation allowances (BPRA) would be extended for an additional five years until April 2017. This is subject to a cap on qualifying expenditure of €20 million and new restrictions to comply with EU state aid rules from 12 April 2012.

The Chancellor also announced that the Government will, from 1 April 2012, make enhanced capital allowances available on plant and machinery expenditure at a designated site in the London Royal Docks Enterprise Zone; at designated sites in enterprise areas in Scotland, including Irvine, Nigg and Dundee; and at Deeside in North Wales.

Regeneration

The Government has said that to support regeneration it will:

- Make up to £150 million available through tax increment financing (TIF) for large scale projects in core cities from 2013–14. TIF enables local authorities to borrow against future growth in business rates. The Government will hold a competition for allocating funding and further details of this will be announced in the coming months.
- Increase the Growing Places Fund, which is intended to improve infrastructure and promote economic growth, jobs and houses, by £270 million, including by £70 million in London.

Planning

The Chancellor followed up on announcements last year and has said the Government will reform the planning regime to support growth. The Government will publish, and bring into force, the National Planning Policy Framework (NPPF) by the end of March 2012. This will contain a "powerful" presumption in favour of sustainable development.

The Government will also consult on reducing information requirements and on proposals to amend the Use Class Order and the associated permitted development rights.

Real Estate Investment Trusts (REITs)

As announced at Budget 2011, the Government will legislate in Finance Bill 2012 for a number of changes to the REIT regime to make it easier for companies to convert to a REIT.

The Government will also consult on the REITs regime, and will specifically look at the role REITs can play in supporting social housing.

Carbon Reduction Commitment (CRC)

The Government has also announced that it will consult on simplifying the CRC scheme to reduce administrative burdens on business and if this proves impractical it will replace CRC with an alternative environmental tax.

Anti-Avoidance

As announced earlier in the month, legislation will be introduced to deny agricultural property loss relief and post-cessation property relief where the relief arises from tax avoidance arrangements

A consultation on a general anti-abuse rule (GAAR) to be introduced into UK tax legislation will take place in the summer with a view to introducing legislation in Finance Bill 2013. The consultation will include draft legislation based on the Aaronson report, the establishment of an advisory panel, and the explanatory guidance to go with the legislation. It should be noted that the Government now proposes to extend the GAAR to SDLT.