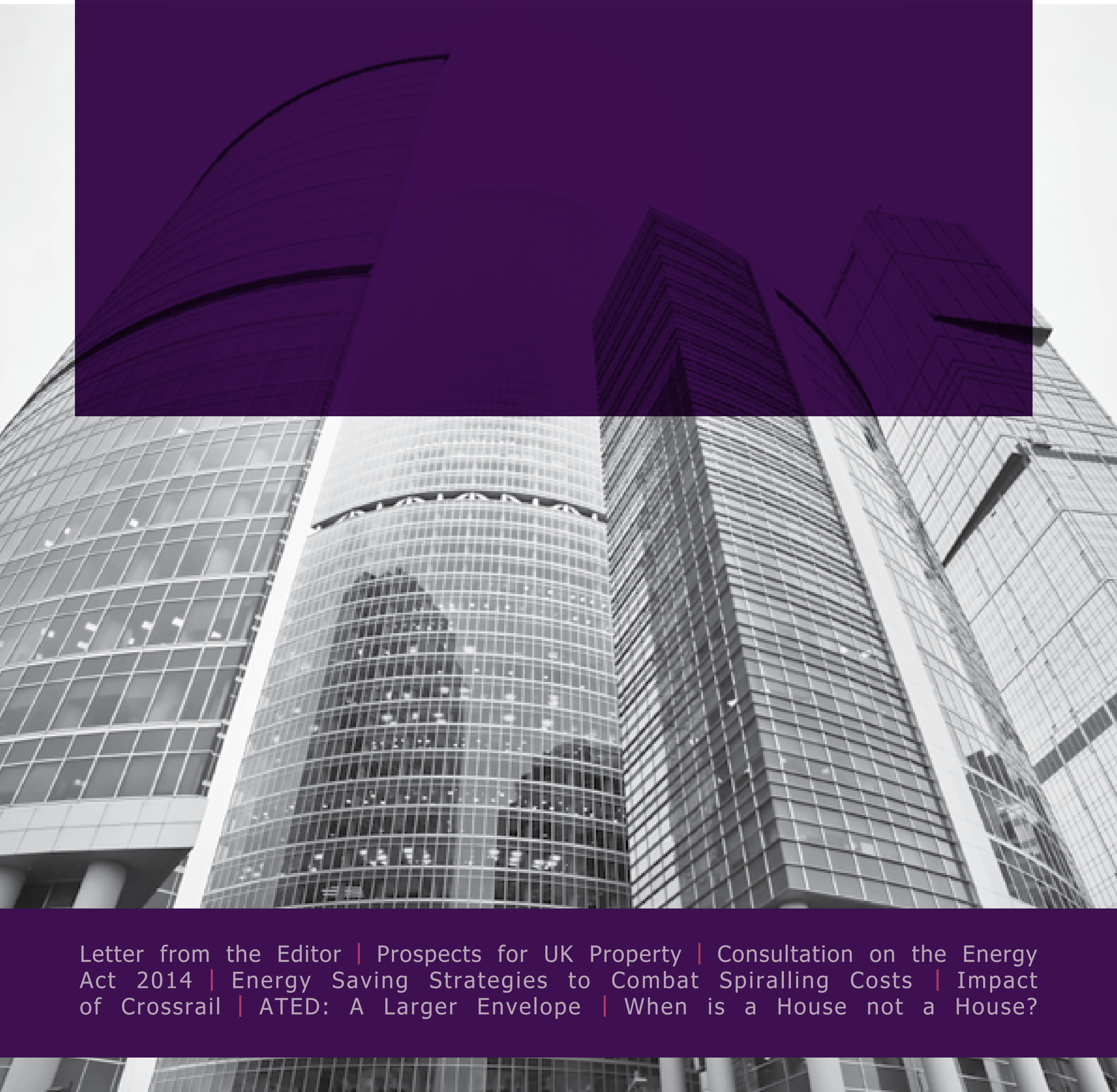
Autumn 2014

haysmacintyre
chartered accountants & tax advisers

PROPERTY BRIEFING



LETTER FROM THE EDITOR

Welcome to the Autumn 2014 edition of our property briefing. In this edition we look at a variety of issues affecting the property sector, ranging from the widening tax net for enveloped properties to how to save money and be green at the same time.

After a very successful breakfast seminar earlier this month on the economic outlook for property, Jeremy Cook has committed his thoughts on the outlook for property in our first article. One future issue for property is how it adopts the requirements of the Energy Act 2011 (see our Autumn 2013 briefing) which will be coming in. Since our last briefing we have, at last, had the feedback from the working parties that were set up to consider the practicalities of these forthcoming Energy Act requirements. Our article updates you on the sector's thoughts and views arising from these consultations.

Complying with the Energy Act will require investment for some property portfolios and some property companies are taking the opportunity to reduce operating costs at the same time as making energy improvements. In his article on spiralling energy costs Mark Sait explains how this might be achieved.

It is the largest construction project currently under way in Europe, it has even had its own television series, and anyone who travels around London cannot have missed that, after decades of proposals, Crossrail is finally coming. But what does it mean for the property sector? Alistair Subba Row discusses the likely impact of this massive project on the property sector in midtown.

When is a house not a house? When VAT is involved, or it might seem that way given a recent tax case. Read our article on this to find out more and how what might seem trivial changes to plans could have dramatic, unexpected and costly VAT implications for you.

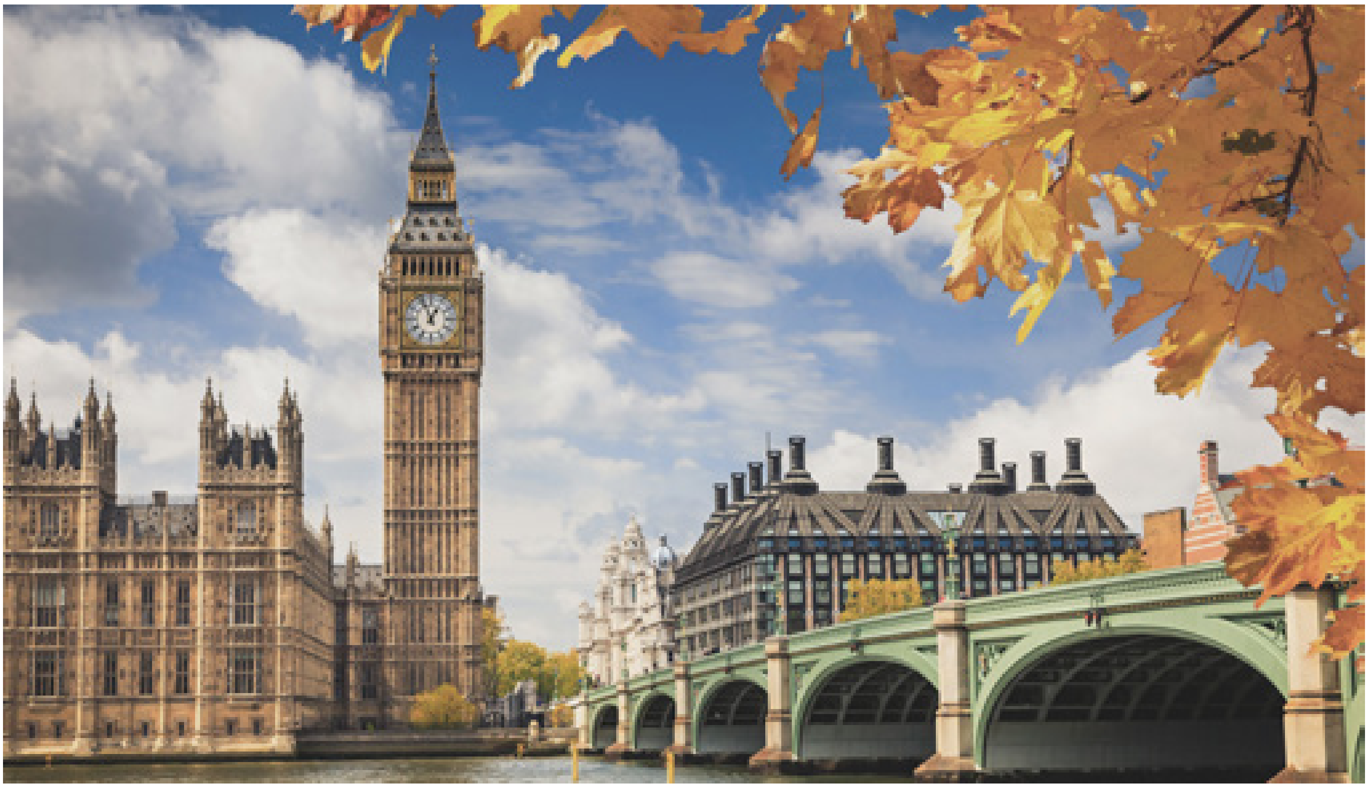
Property has certainly been made to pay for reducing the budget deficit with increases in stamp duty and the introduction of the annual tax on enveloped dwellings ("ATED"). Now we see the widening of the scope of properties within the ATED regime and our article on "A larger envelope" explains the implications of this and who will be affected.

Finally I would like to thank our guest contributors, Mark Sait from Savemoneycutcarbon, Jeremy Cook from World First Foreign Exchange and Alistair Subba Row from Farebrother for their support on producing this briefing.

The haysmacintyre property team would be delighted to hear your thoughts and views on the matters raised in this briefing. If you have any issues or thoughts that you wish to discuss please contact your usual haysmacintyre adviser or me.

We look forward to hearing from you.

Ian Daniels, Head of Property



PROSPECTS FOR UK PROPERTY

Jeremy Cook, Chief Economist and Head of Currency Strategy for World First Foreign Exchange, sets out his thoughts on the current and future issues for property.

The state of the UK economy is strong as we enter the last quarter of 2014. The outlook for the UK housing market is slightly more finely balanced. Of course, I'm unable to sit here and tell you that everything is strong within the UK economy. The divergence between real wage increases and UK asking prices is in sharp contrast for any of us who read the property section of the weekend papers.

GDP in the UK is growing at around the 3.0% level, close to the highest level within the G10. Inflation, as within most developed nations, is seemingly under control at 1.6%, kept low by a strong pound beating down on import costs. Unemployment within the UK has come dramatically lower in the past 18 months or so. Had you told me that the UK economy would be running an unemployment rate of close on 6% by the beginning of the final quarter of 2014, I'd have thought you were mad.

Challenges to the UK economy obviously still exist. The productivity puzzle is something that's baffling economists to this day. Even with the unemployment rate close to what some economists call the natural rate of unemployment, wages remain in the doldrums.

Wages remain key to the Bank of England's monetary policy outlook. Real wages represent the silver bullet to killing off fears over the recovery. Real wage increases come from optimistic employers happy with business conditions, they allow consumers to re-balance spending figures from credit uptake and promote growth in generalised output with a central bank more comfortable to normalise monetary policy. We are currently expecting the Bank of England's meeting in June 2015 as being the meeting that will see the first rate rise.

Last month, the Nationwide Building Society - the UK's largest building society and one of the largest mortgage lenders - saw house prices fall for the first time in 17 months. A 0.2% fall in prices represents around a £379 decline in the value of the average £189,306 property. This is not the end of the world but suggests that some of the madness that was seen in housing has started to recede.

Falls in prices are natural as demand slows. Simple supply and demand dictates that price levels dictate the level of supply and demand. As price increases, demand falls off until nobody will pay that amount. Prices have to dip to pick up demand. Have UK house prices already reached their peak therefore?

House prices in the UK have risen around 3% above the levels seen at the beginning of 2008. Prices within the 20 largest metropolitan areas in the United States according to the Case-Shiller index are still around 6% lower over the same time period. London house prices are over 30% higher on average. The affordability of housing is therefore a direct issue for buyers and investors alike.

Earlier in October, the Centre for Economic and Business Research became the first real policy shop to publish its expectations of the property market into 2015. The CEBR has said that it expects prices to fall by 0.8% through 2015 following a near 8% expansion in 2014. The reasons why are more demand side than supply side, of course.

Tougher mortgage eligibility criteria and high deposit requirements have been part of the lending landscape for six months or so. Once the loan is obtained, however, base rate concerns become obvious. Despite every Bank of England official out there saying that rates rises will only be "limited and gradual", fears that the hiking cycle will run higher and faster than markets currently expect – base rates at around 2.5% in two years' time – have got buyers doubting their commitment levels to that pad in the suburbs.

Upwards pressure on UK property prices from foreign investors will continue especially if sterling falls that make UK property cheaper in currency terms continue. Unfortunately, UK property may be looking a little less like a haven asset ahead of the election in 2015 and following the continual governance issues that the all-to-close Scottish referendum brought up. Tax issues, such as a possible Mansion Tax - although ill thought out at the moment - remains a definite possibility in the long term, I believe.

The outlook for the UK housing sector is definitely a mixed one. Supply issues remain despite the cranes I can see from my office window and as long as supply remains choked, then prices will persist on its upward trend. Debts and the affordability thereof are a focus that the Bank of England will become more vocal on in coming years and macro-prudential measures to control house price inflation cannot be ruled out.

Jeremy Cook, Chief Economist and Head of Currency Strategy for World First Foreign Exchange.

Jeremy has been working in FX markets since 2007. Named as the Square Mile's "Most Influential Person in Finance Under 30" at the height of the Global Financial Crisis, Jeremy aims to educate and advise all who will listen on the day-to-day moves of the FX markets as well as the long-term implications of fiscal and monetary policy in the G10 space. His views are sought by global business media and is a regular "talking-head" on BBC, Bloomberg, CNBC and other business panel shows. He is currently awaiting the crash of the Japanese yen.

CONSULTATION ON THE ENERGY ACT 2014

BACKGROUND

The Energy Act 2011 ("the Act") is part of the Government's drive to tackle concerns over greenhouse gases as well as backing its international obligations. In particular, it supports the Climate Change Act 2008 which committed the Secretary of State for Energy and Climate Change to reduce greenhouse gas emissions by 80% by 2050 against 1990 levels.

The Act has three principal objectives: tackling barriers to investment in energy efficiency, enhancing energy security and enabling investment in low carbon energy supplies. To support these the Act established a number of commitments for the domestic and non-domestic property sectors. Amongst these was the introduction of legislation that would prohibit the ability to let (and possibly continue to let), with effect from no later than 1 April 2018, property that had an energy performance certificate ("EPC") rating below a level to be ascertained, but thought to be an "E" rating. In addition the Act introduced legislation to prevent landlords unreasonably refusing a tenant's request, after no later than 1 April 2016, to make energy efficiency improvements to domestic property.

Clearly this Act gave property owners a number of issues to wrestle with, but they were not helped by a lack of detail in the legislation, other than references to "regulations to be published". Despite the Government's initial reluctance to engage with the property sector, and its intention to issue details of the enforcing regulations nearer the time, lobbying from a number of interested bodies, including the British Property Federation, resulted in the establishment of two working groups in early 2013 to advise on the practical implementation.

Although the two groups were due to report in late 2013, we had to wait until July 2014 to see their recommendations. Whether a letter, dated 30 May 2014, from the UK Green Building Council to David Cameron asking for the consultations to be published, amid rumours of significant Government opposition, was instrumental in obtaining their release is unknown, but some of the wording in the reports suggest they have been on a shelf for a while.

Both groups supported the minimum rating as being "E", but was the wait worth it?

DOMESTIC WORKING GROUP

This group believes the regulations have the ability to "transform" the existing private rented housing stock and asked that the sector is given sufficient lead-in time to adapt. The group's deliberations included the following:

- in certain circumstances, such as when the improvements requested would have a negative impact on property value, landlords should be able to refuse improvement requests from tenants;
- there should be no upfront cost to landlords for making improvements, with funding coming from the Green Deal, grants or the tenants' own resources;
- a suggestion from some that the tenants' request deadline should be brought forward by a year to 1 April 2015;

- on introduction, the regulations should only apply to new tenancies but within a further thirty months all properties to be compliant;
- as with the tenants' requests deadline, some favoured the regulations starting a year early in April 2017 for lettings;
- a suggested penalty of up to £5,000 for non compliance with the regulations;
- no tightening of the regulations after 2018, unless harmonising with other energy efficiency policies and with sufficient warning; and
- there should be few properties excluded from the remit but more work was required to define these.

NON-DOMESTIC GROUP

As with the domestic group, there was a desire for quick consultation in order to permit sufficient lead-in time and, again, a belief of a potentially "transformational" effect on the stock of commercial property. Some of the other thoughts of the working party were:

- the EPCs should be on the basis of Minimum Building Energy Performance Standards ("MEPS");
- there is some concern over the quality and consistency of EPC assessments;
- the MEPS should apply to the first lettings after April 2018 with the suggestion that non compliant properties should be upgraded by a, as yet unspecified, backstop date. However, there was recognition that further assessment of the effect of a backstop date was required;
- it should be possible to market non compliant properties provided a compliant fit-out is agreed prior to occupation;
- there should be few exemptions to the regulations and these should be reduced over time; and
- if there is further tightening in the future this should be linked to clear evidence and objectives, together with plenty of notice to allow the property industry to react.

NEXT STEPS

There is a clear appetite from the property sector to embrace the regulations but it is a shame that, to date, the Government has been dilatory in its engagement with the sector. The next step is likely to be the issue of the draft regulations for consultation but, with an election in May 2015, we are not holding our breath to see the regulations in the near future.

Property involves making long term investment decisions and it is unfortunate that, despite its best attempts to engage with Government over the Act, the sector will have to make some of its investment decisions guessing as to the effect of the Act. If only Sir Bernard Woolley could type with two fingers!

Ian Daniels, Head of Property

ENERGY SAVING STRATEGIES TO COMBAT SPIRALLING COSTS

INTRODUCTION

The stark fact that utility bills have doubled in the past decade is a compelling driver for every business and household to manage energy and water consumption in the most efficient ways.

Energy bills are forecast to double again in the next 10 years and the Government has repeatedly warned that the era of cheap energy is over.

The only good part of this dismal scenario is that businesses can take some pretty simple steps to make big savings on their energy and water bills. At the same time, the focus on energy efficiency can feed into and reinforce a company's Corporate Social Responsibility (CSR) strategies that now are an essential element for every enterprise.

A recent survey of 2,500 businesses in 34 economies shows that businesses are being driven towards more CSR practices not simply to build the brands or for altruistic reasons, but because it makes good financial sense.

Another benefit is the improved Energy Performance Certificate rating that should be achieved from a range of efficiency measures and it will be commercially essential for the widest range of businesses to have an EPC of E grade or above over the next few years.

First step, whatever the business size, is to conduct a full utilities audit. Time is precious but the information is essential for making the right energy-saving decisions as well as for effective measurement, forecasting and monitoring. There's no benefit in investing in a range of solutions with no way of identifying their level of success.

The audit also focuses minds on sustainability, which is surprisingly still an issue as an npower survey recently highlighted that for nearly half of SMEs energy consumption accounts for 25-50 per cent of total business costs yet only 20 per cent see energy management as 'very important'.

LIGHTING - RAPID RETURN ON INVESTMENT

After the audit, businesses should choose the quickest wins to ensure a rapid return on investment. Swap out traditional, energy guzzling lighting – and even any CFL bulbs - with LED lighting. By every measure, LED lighting delivers very impressive results, cutting electricity use by up to 90 per cent. The payback time is quick – perhaps as little as 12 months – then the LEDs go on saving energy for many years.

For many environments, LEDs are a "fit and forget" solution, with up to 50,000 hours of life compared to the 1,000 hours of traditional incandescent bulbs, 2,500 hours for halogen fittings and 8,000 hours for traditional tubes. Apart from massive savings in energy, maintenance costs are also reduced substantially.

As an example, if a company replaced 60 tube lights with LEDs it could save around £2,200 a year in electricity costs. Top quality LED panels are also an extremely popular, effective and energy efficient way to light a working environment. Providing a higher, more consistent flicker-free light, they are the perfect replacement for the traditional 600×600 modular luminaires and fluorescent tubes, commonly found in most commercial installations.

The quality of light from the best LEDs is also much better, which helps to improve both retail and general workplace environments.

FLUID MONEY-SAVING SOLUTIONS

After lighting, water is a good focus for businesses looking to quickly reduce utility costs, with rapid return on investment. For any company on a water meter, managing consumption is transparently beneficial but remember that all businesses will benefit from reduced usage, which saves on energy needed to heat and pump the water.

Fitting eco taps and/or tap aerators should ensure that water consumption is cut by more than half. The best eco taps and aerators work by cleverly mixing air with water flow, without affecting the experience.

The same applies in shower environments. Replacing a water-guzzling shower head with an eco shower head reduces consumption by more than 50% and many people prefer the "champagne effect" of water-saving aerated products as well.

HEATING AND LIGHTING SMART CONTROLS

Intelligent controls for lighting and heating can also make a big dent in utility bills. Lights left on is pure waste but easy to do. Intelligent controls will turn off automatically when rooms are not in use and adjust to the environment, dimming or switching off when more daylight is available in the room.

In heavy use settings, heating, ventilation & air conditioning (HVAC) smart controls ensure that heating and ventilation costs are kept to a minimum when a space is not being used.

HVAC use a huge amount of energy, especially in 24/7 operations like hospitality, hospitals or residential homes. Energy surveys demonstrate that it can represent typically 60 – 80% of the total building's energy consumption.

No more so is this true than in a busy hotel, that has to heat or cool every room all the time and this is where the unique GEM wireless intelligent control system was developed to control individual hotel rooms, one of the most challenging environments with ever changing guest occupancy patterns. Successfully installed in over 250,000 hotel and meeting room spaces, the system consistently delivers energy savings of 30 – 35% without any impact on the occupant's comfort.

Although a leading product in the hotel sector, the system can easily be adapted to any room space that has variable and localised occupancy patterns. Potential exists for controlling school and university classrooms, student accommodation, meeting rooms, offices, hospitals and retail outlets.

Effectively the system is a mini building management system but in every room / space, intelligently controlling the space linked to actual real time occupancy, all installed quickly and at the fraction of the cost of a typical BMS system.

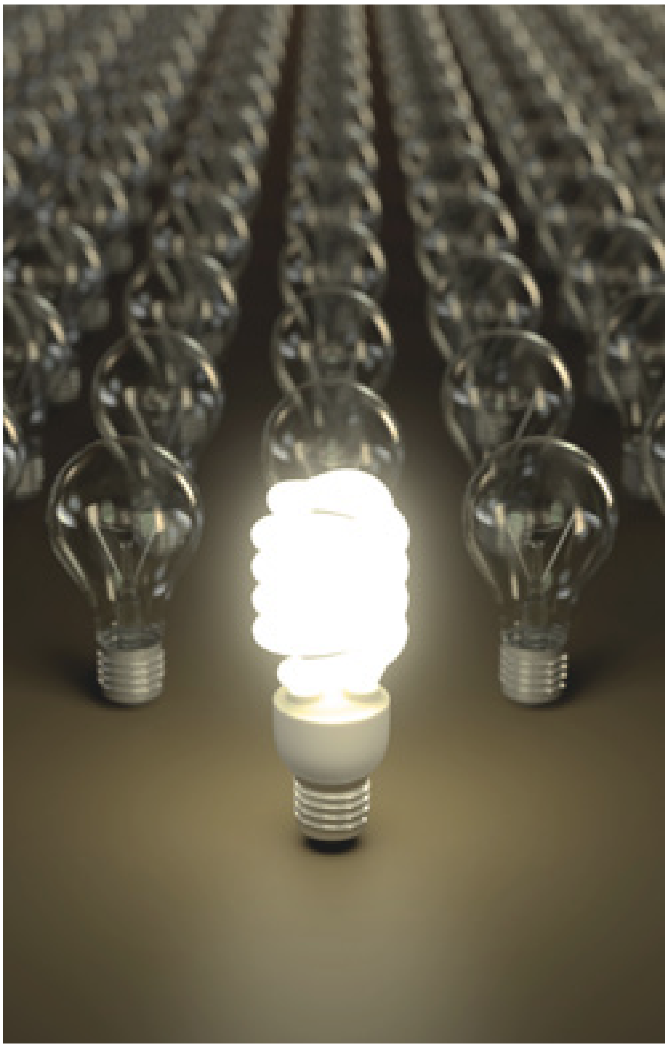
INTELLIGENT PUMP SAVERS

More than two-thirds of electricity drawn down each year by industry across the globe is consumed by electric motors numbering many millions. Virtually every sector of industry and commerce depends on these workhorses to power machines, compressors, fans, pumps and conveyors.

And as millions more motors are added or replaced, there is a compelling case to buy variable speed drives (VSD) and high-efficiency motors, which can deliver energy savings of up to 50%.

What's more, the payback on investment is very quick – from as little as six months.

Most recent energy-saving successes have been in education, manufacturing, airports, food, railways, laundry and mining.



SaveMoneyCutCarbon.com is the UK partner and value-added reseller (VAR) to ABB, the world's largest manufacturer of electric motors and drives. We provide full-service solutions on HVAC and HCC drives, pumps and inverters.

A top target for business energy savings is to maximise the efficiency of pumps and fans. These "variable torque" applications offer impressive savings because the power load changes with the cube of the speed. For example, with a 7% speed reduction – 3.5Hz on a 50Hz system – you cut energy use by a fifth. The energy saving is increased to 50% simply by reducing the speed by 20%.

Currently, there are millions of pumps that are poorly matched to the need – over-specified massively to cover every eventuality. VSDs solve that energy-wastage by adjusting motor speed to match the exact production needs and cut electricity consumption substantially.

There are immediate paybacks with VSDs that build from month one as an average electric motor consumes its purchase price in electricity every 30 days.

SMART LIGHTING CONTROLS

Smart light controls provide up to 60% savings on existing lighting electricity usage and with LED replacement solutions, the savings are even greater.

The SaveMoneyCutCarbon EnergiTriPak is the ideal solution for new construction or retrofit in the widest range of environments:

- Offices
- Schools
- Hotels & restaurants
- Hospitals and care homes
- Corridors and common areas
- Stores and cupboards

Lighting typically accounts for 20.8% of electricity usage in a new construction or retrofit commercial applications, which include spaces such as classrooms and offices.

Studies also show that proper lighting is beneficial to people. By providing task-appropriate lighting and individual lighting control, EnergiTriPak improves comfort and satisfaction, which aids increased productivity.

Changing behaviour is sometimes hard so it makes sense to focus on the simple, effective, rapid-return solutions. Retrofit lighting, water and heating products do not demand any changes in behaviour and make the biggest difference to the bottom line.

Mark Sait

Mark Sait is Managing Director of leading energy-saving specialists SaveMoneyCutCarbon.com

IMPACT OF CROSSRAIL

Alistair Subba Row, Senior Partner at Farebrother, gives an update on the Crossrail effect and how it promises to re-define Central London.

From a real estate perspective, Central London has historically been defined along its East – West axis. The core office markets were traditionally the West End and The City, with Hammersmith and Docklands providing the Central London market's outer parameters.

Twenty five years ago, London's geographical centre, Midtown, was for a long time seen as no-man's land, lacking identity and primarily an office market that served the overspill from the neighbouring West End and City. Midtown has long since emerged as one of London's most desirable office locations – indeed it is Central London's most oversubscribed market, with availability down to only 4.1% of total stock - and Crossrail has played a key role in that.

Make no mistake, Crossrail is a genuine game-changer, especially for Midtown with stations at Farringdon and Tottenham Court Road. By its opening date in 2018, it will boost the capital's rail capacity by 10%, it will be used by 200 million passengers per year, and will bring 1.5 million people within 45 minutes of Central London. Moreover, Crossrail promises to re-define Central London and determine how the capital will evolve in the future.

Much has been made of the line's reach out to the East and West, but it will have a huge impact in the centre of London. According to a report by Transport for London it will mean Midtown becomes "possibly the most accessible place on the planet."

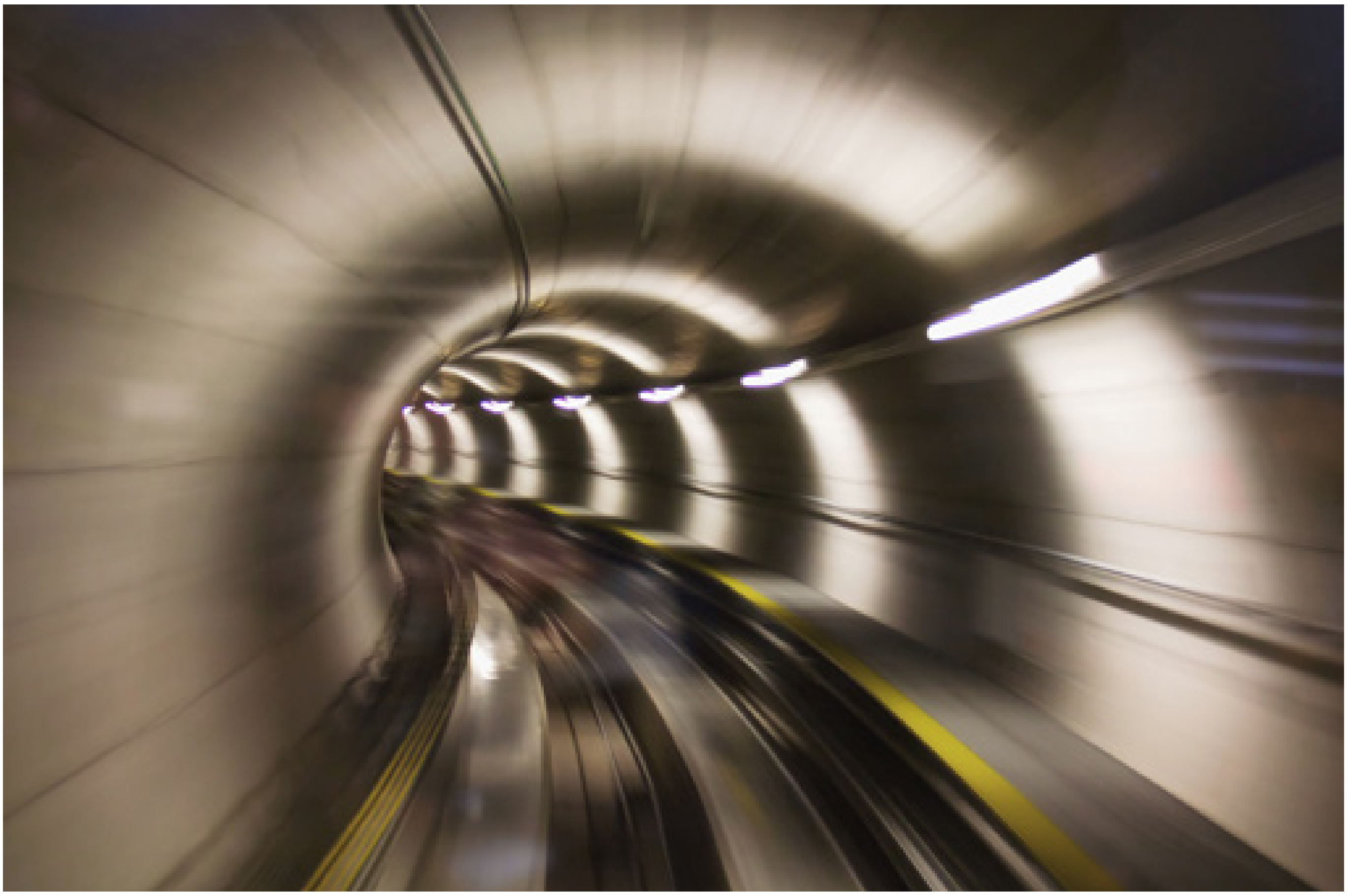
For this reason we are seeing unprecedented levels of demand for Midtown office space and in January 2013 investment bank Goldman Sachs made a major commitment to the area, unveiling plans for a 850,000 sq ft campus at Shoe Lane, EC4.

This standout deal indicates the diversity of the occupier-base in Midtown. Traditionally a location favoured by the legal fraternity, Midtown is now an attractive alternative to the City for financial services companies, and sufficiently diverse and vibrant, with the introduction of retail, bars and restaurants, to pull in the technology, design and creative communities.

In recent years we have seen Mishcon de Reya, Saatchi & Saatchi, Bird & Bird, Skype and Weber Shandwick commit to in excess of 1 million sq ft of office acquisition transactions. In addition we have also witnessed the arrival of some of London's most desirable hotels, restaurants and leisure facilities making Midtown the capital's most diverse place to live, work, play and visit.

Crossrail has unquestionably accelerated Midtown's evolution. Expect further dramatic changes over the next four years. Roll on 2018!

Alistair Subba Row, Senior Partner
Farebrother



ATED: A LARGER ENVELOPE

When the Chancellor announced in Budget 2012 that he intended to introduce counter measures to prevent tax avoidance by "enveloping" high value residential property in the UK, there was probably an inevitability that it would be extended down the value scale and so it has proved.

WHO IS AFFECTED?

Introduced with effect from 1 April 2013, the Annual Tax on Enveloped Dwellings ("ATED") originally applied to UK residential properties with a value of £2 million or more at 1 April 2012, or at acquisition date if later, where the property was held by a company or other "non-natural person". For these purposes, a non-natural person includes a company, other corporate body or a collective investment vehicle, such as a unit trust or open ended investment company; partnerships can also be caught if they involve any of the preceding legal forms. However, a company that holds a property as a corporate trustee in a bare trust is not included in the ATED regime, although the person who has beneficial ownership might be caught.

When the ATED legislation is relevant the following charges may apply:

- an annual charge of up to £143,750 (2014-15 tax year), depending on the property's value;
- Stamp Duty Land Tax ("SDLT") at the higher rate of 15%; and
- sales of residential properties by those subject to the ATED annual charge are brought within the scope of Capital Gains Tax ("CGT"), with gains accruing on or after 6 April 2013 being subject to tax at 28%.

EXTENSION OF ATED

In Budget 2014 it was announced, not only would the ATED charging structure be expanded to cover properties valued at more than £500,000, but that for contracts entered into on, or after, 20 March 2014 the 15% rate of SDLT would be applied.

The extension of ATED to properties worth £500,000 or more was not immediate, with the reduced value limit being phased in as follows:

- from 1 April 2015 residential properties owned by non-natural persons (such as companies) valued at £1-2 million will be liable to an annual charge of £7,000; and
- from 1 April 2016 this will be expanded to properties valued at £500,000-£1 million, where the annual charge will be £3,500.

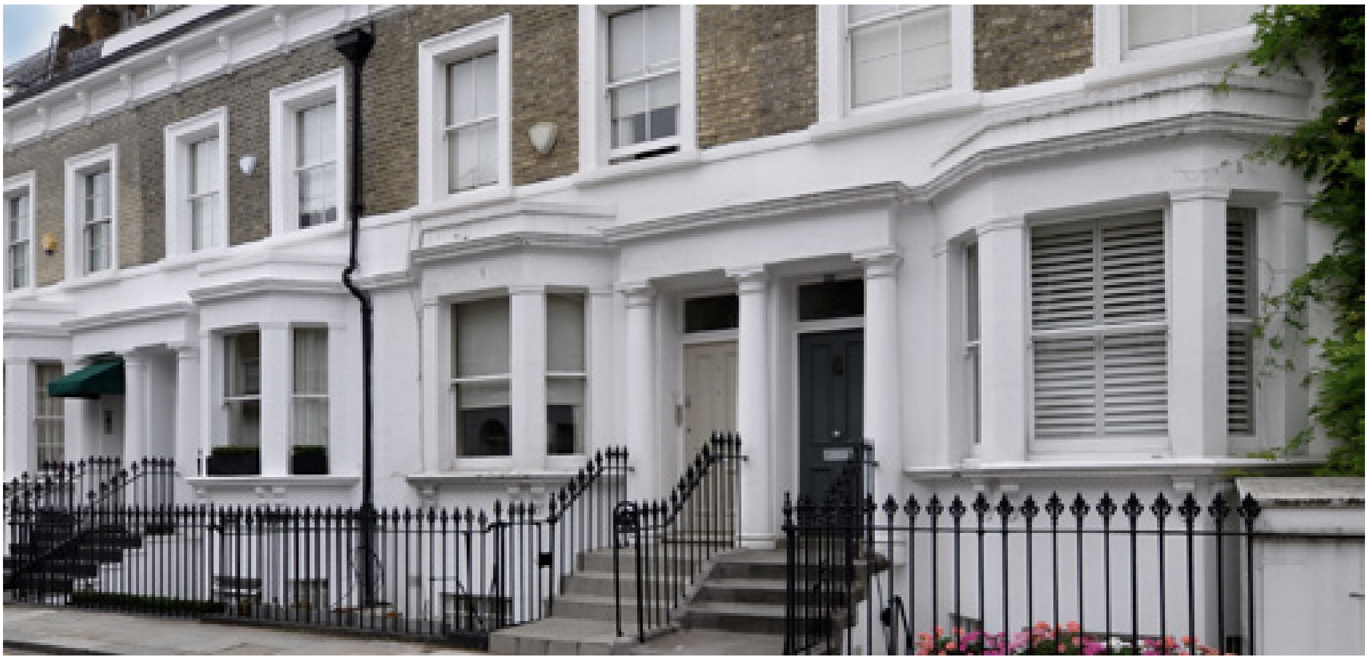
Although it has been announced that the annual charges will be increased in line with the annual increase in the Consumer Prices Index ("CPI") to September each year, there has been no such commitment to increasing the bands. Given the Government's statements that they regard ATED as an attack on tax avoidance, increases in the bands are not expected; in fact, a further reduction, possibly to zero, is more likely than any increase.

RETURNS

The ATED is due by 30 April in the year of assessment meaning that for 2014-15 those affected should have made the return, and paid the relevant tax, by 30 April 2014. Penalties will be applied for late or non-submission of returns. The following rates apply for the current year:

Property value	Charge for tax year 2014-15
£2m - £5m	£15,400
£5m - £10m	£35,900
£10m - £20m	£71,850
£20m+	£143,750

The ATED returns for the year ending 31 March 2016 are due by 30 April 2015, along with payment of any tax due. The amount of tax due has not yet been announced but will be based on the annual CPI increase to September 2014.



RELIEFS

Fortunately, reliefs from the ATED charge are available in order to prevent, otherwise, commercial businesses being caught by its reach. For instance, reliefs continue to apply for residential properties let to third parties on commercial terms and for property development businesses. However, these reliefs must be claimed each year in the ATED return submitted to HMRC, they do not make the business exempt from the administration process.

CONSULTATION ON REDUCING THE ADMINISTRATIVE BURDEN

HMRC recognises the administrative burden on those commercial businesses who must comply with the ATED regime, even when no tax is due. In recognition of the administrative burden HMRC issued a consultation paper in July 2014 with proposals to reduce the number/frequency of returns required for those companies eligible for relief, such as property rental and development businesses.

The consultation has suggested two alternative approaches for those businesses where reliefs are available. The first option, for those holding more than one property, is to allow taxpayers who do not have an ATED liability to file one return by 30 April in the year of assessment and then submit a supplementary return after the chargeable period, perhaps by the following 30 April, to notify HMRC of any changes in the chargeable period. This option removes the need to report changes on properties during the year and would mean a maximum of two returns being required in respect of each year.

The second option would see the introduction of a "status" regime for those entitled to relief. Under such a scenario taxpayers with no ATED liability might be granted an "exempt status" meaning that no ATED return was required each year. Such "exempt" entities would need to give a confirmation of their exempt status to HMRC at various intervals – one, three and five year intervals are mentioned in the consultation.

Under both options taxpayers would be required to maintain records sufficient to support that no ATED was applicable but this should not be an onerous requirement for any organised business. The consultation closed in mid September and we expect further announcements in the coming months. It is possible that further details will be released in the Autumn Statement 2014 at the start of December in order that the simplification of the return system can coincide with its extension to properties valued above £1 million.

CONCLUSION

With the Government still looking to reduce the country's deficit imposing taxes under the guise of tackling tax avoidance is politically appealing. However, ATED imposes additional compliance obligations in terms of record keeping and making returns. Active recognition and management of the issues is key; early engagement with the process is strongly recommended.

Katharine Arthur, Head of Tax

WHEN IS A HOUSE NOT A HOUSE?

The VAT rules regarding land and property can be complex, and the recent case of Boxmoor Construction Limited at the First Tier Tribunal has shown, yet again, the importance of ensuring you get the VAT position right if you are not to incur unexpected costs.

BACKGROUND

It is generally well understood that the services of a contractor supplying services in the course of construction of a building designed as a dwelling are zero-rated. This is all well and good if the building is entirely new, but what is the position if there is an existing building on the site?

The notes to the schedule on zero-rating say that a building only ceases to be an existing building if it is demolished completely to ground level, or the part remaining above ground consists of no more than a single façade, or if it is on a corner site a double façade, the retention of which is a condition of planning consent.

THE CASE

In the case of Boxmoor, the works actually carried out involved the removal of the entirety of the existing dwelling, with the exception of a small portion of the front façade which was referred to as the "projecting bay", and the construction of a replacement dwelling incorporating that façade. The demolition included removing all the existing foundations.

Photographic evidence produced at the Tribunal hearing showed that, at one stage, all that remained was a corner façade, being the projecting bay box window section, which was supported by a temporary structure whilst the rest of the building was demolished. However, HMRC took the view that the conditions for zero-rating were not met and that no new dwelling was constructed. As a result they assessed Boxmoor for VAT on their services, which had been zero-rated. The key issue was whether the planning consent had required the part of the façade to be retained.

The planning consent described the approved works as a "single storey side, single and two storey side to rear extensions incorporating front dormer and roof alterations".

The Full Plans Approval Notice confirmed that the works had been passed as complying with building regulations. This described the work as a "Two storey side and rear part single storey front extension. Loft conversion and internal alterations including relocation of ground floor staircase. Removal of load bearing walls and formation of two first floor en-suites".

The architects had provided Boxmoor with a letter which stated that:

> "I can confirm that the small section of the façade was retained after discussion with the planning authorities who explained that if it was completely demolished it would nullify the planning permission already granted. The planners were very keen in ensuring that the building retained much of its original character, and considered it very important that we maintain what we have although it would structurally have been more sensible to demolish the whole property. The projecting bay was considered one of the characteristic features of the whole estate".

At no stage was there any suggestion by the planning authorities that the works did not comply with the consents given, and it was clear that both Boxmoor and the owner of the property were of the view that the retention of the façade was required even though it made the project more expensive.

However, HMRC argued that the requirement to retain the façade had to be explicit in the relevant building consent.

THE DECISION

The Tribunal accepted that the house had been virtually demolished, but ultimately felt that it had not been provided with sufficient evidence to support the argument that the retention of the façade was a condition of planning consent. Accordingly, the conditions for zero-rating Boxmoor's work were not met. Essentially the Tribunal took the view, for VAT purposes, that the works were no more than alterations to an existing house even though to the ordinary observer they were likely to have been considered the construction of an entirely new house.

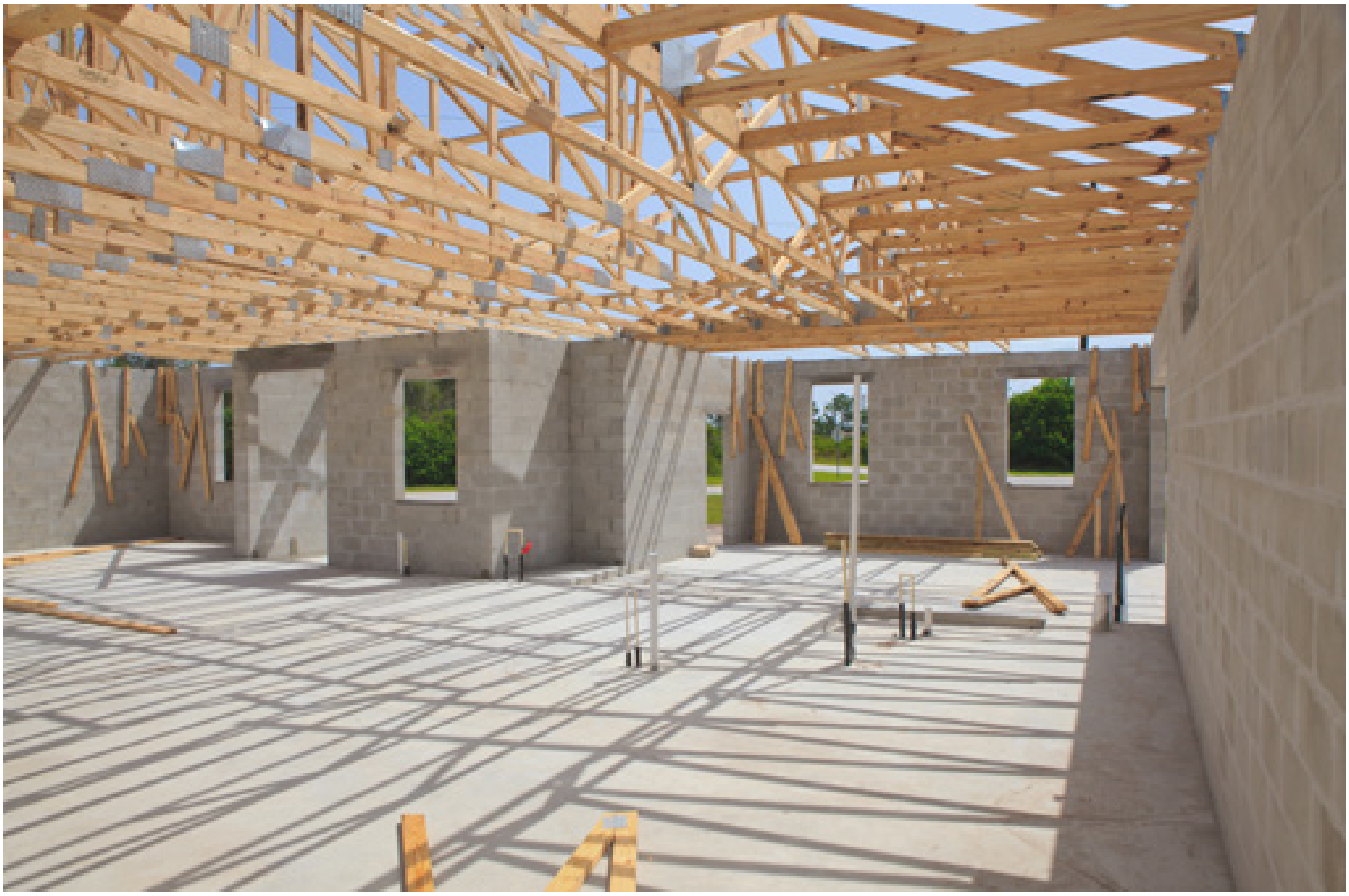
The impression we get from this case (perhaps from the fact that neither the architect, nor the planning authority were called as witnesses) is that the work that was done was more than originally intended and that, whilst the authority were content for it to happen, they were not prepared to explicitly commit to consent for it to happen.

THE LESSON

This case demonstrates the importance of ensuring that the work that is carried out on property reflects what has been approved with the planning authorities and that, no matter how small the change might appear, variances from the approval might have unexpected, and costly, consequences.

This situation just goes to reinforce how complex the VAT rules can be for property; those involved in making supplies to property clients need to be aware of the possible VAT consequences. Trying to help your client could prove costly if plans change.

Phil Salmon, VAT Partner



haysmacintyre
chartered accountants & tax advisers

Future events

Accounting and Tax Breakfast Seminar	10 December 2014

For further information on these events please visit www.haysmacintyre.com/events

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Should you wish to receive an electronic version of our briefing in the future please email Charlotte Gibbons on cgibbons@haysmacintyre.com

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