

Ask an expert

Capital allowances on freehold purchases

Q I have taken on a new client which owns and operates several nursing homes. It has claimed capital allowances for routine additions, like beds. However, it did not claim anything for the freehold purchases and has heard that it potentially can. Is this correct? And how should it go about it?



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A Yes, potentially your client should be able to claim capital allowances. Under the general rules, plant and machinery (P&M) includes both moveable items (eg, furniture) and fixtures inherent in the fabric of the building. Examples of the latter include sanitary appliances and fire alarms. Also, for expenditure incurred from April 2008 many major assets are now designated as plant by CAA 2001 s 33A. These are called 'integral features' and include all electrical systems and lighting; cold and hot water; heating, ventilating and air conditioning; lifts and external solar shading. Integral features qualify for relief in a new owner's hands *even if* they have never previously qualified for any capital allowances. When your client acquired his nursing homes, the properties would have included many of these assets.

CAA 2001 s 11 sets out the basic conditions to claim P&M capital allowances. These include that the taxpayer must have a 'qualifying activity' (that is, a business, such as a trade) and incur 'qualifying expenditure'. Broadly, 'qualifying expenditure' is capital expenditure incurred on the provision of P&M for the purposes of the taxpayer's qualifying activity, and the taxpayer must own the P&M (or be deemed to be owned it for tax purposes). Your client therefore meets the basic conditions.

Establishing the quantum of the claim: When the business bought the freeholds it acquired a combination of assets. These included land and buildings (ie, the 'bricks and mortar') that would not qualify for capital allowances as well as the P&M described above. When mixed assets are purchased, then the expenditure qualifying for capital allowances is calculated by preparing a 'just and reasonable apportionment' of the purchase price (CAA 2001 s 562). The aim is to reflect the value that each constituent part makes to the value of the whole. Merely deducting a land value is not sufficient. An apportionment is a specialist tax valuation exercise and similarly, Inspectors of Taxes are instructed to consult the Valuation Office Agency and must not negotiate adjustments themselves.

However, it is not that simple because for P&M fixtures upon which a prior owner has claimed capital allowances, the buyer's claim is limited to the seller's disposal value. In most cases in practice (eg, in the absence of a low CAA 2001 s 198 election), this is usually the full original cost claimed by the seller (meaning that, by default, all the capital allowances pass to the buyer). Therefore, as a recent, albeit in my view

poorly argued, tax tribunal decision showed, to avoid problems it is vital to investigate the capital allowances history of the property and take expert advice to properly interpret this (*Mr & Mrs Tapsell & Mr Lester v HMRC* [2011] UKFTT 376 (TC)).

Time limits for claiming: Under basic self-assessment rules, a taxpayer has a normal, broadly, two-year window to make or amend a capital allowances claim (corporation tax FA 1998 Sch 18 para 82; income tax TMA 1970 s 9ZA).

Until recently it was possible in some circumstances to claim 'error or mistake' relief, which permitted taxpayers to go back several years and remedy missed capital allowances. But, from April 2010 this was replaced by 'recovery of overpaid tax' provisions, which *expressly prevent* taxpayers rectifying capital allowances errors (corporation tax FA 1998 Sch 18 para 51A; income tax TMA 1970 Sch 1AB para 2).

However, even if the normal two-year deadline is missed then all is not lost. It has been a longstanding principle that if a taxpayer wants to claim P&M capital allowances nothing requires the qualifying expenditure to be added to a capital allowances pool for the chargeable period *in which* the expenditure was actually incurred. Therefore, the taxpayer is free to make a late claim by allocating the expenditure to the pool for *any later period*, as long as the P&M is still owned in that later period (CAA 2001 s 58(4)). This *currently* provides the flexibility to assist taxpayers who have failed to claim capital allowances as early as they could.

Crucially, though, from April 2012, the government intends dramatically changing the rules in the Exchequer's favour and is currently consulting about this [available via www.lexisurl.com/XUMZn]. HMRC proposes that expenditure on P&M fixtures *must* be pooled within one year or possibly two years from the date a fixture is acquired. The likely outcome is that many unsuspecting property owner-occupiers and investors will lose *all* the capital allowances to which they should otherwise be entitled. Where no capital allowances have been claimed for purchases, or it is suspected that they may have been underclaimed, taxpayers and their advisers are strongly urged to consider obtaining expert assistance to properly investigate and submit any additional claim soon.

Although recent expenditure is easiest to review (eg, within the last six years, because records are routinely kept that long) in principle it is possible to go back indefinitely.

So, to conclude, if the client has not already done so, it can revisit its freehold acquisitions and potentially apportion part of the purchase price to assets qualifying for capital allowances. It can only make a claim in an open accounting period, but that can include claims arising from earlier acquisitions. ■

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