



CLAIMING CAPITAL ALLOWANCES FOR PLANT AND MACHINERY FIXTURES - MAJOR CHANGES

Capital allowances are a valuable form of tax relief for the construction or second-hand purchase of commercial property. On 6th December 2011 the Government published Finance Bill 2012. This included major changes to the rules about claiming capital allowances for plant and machinery fixtures. These will affect *all* commercial property owner-occupiers and investors and make it more difficult for buyers to claim capital allowances without timely, expert help.

The changes will take effect from April 2012 (although there is a two-year period of grace until April 2014 during which some transactions will not be affected).

The Government is introducing two significant new obstacles before property buyers can claim capital allowances. If these are not properly addressed at the time of the transaction, then the lost tax relief to the buyer will be catastrophic. This is even expected to reduce the market value of some properties.

'Pooling Requirement'

The established position is that a property buyer may claim capital allowances irrespective of whether the seller has ever made a claim. However, going forward, a buyer will *only* be able to claim if the seller has 'pooled' the capital allowances qualifying expenditure (that is, notified it to HMRC in a tax return). 'Pooling' can happen at any time after the seller has built or bought the property, but must be done *before* the property is subsequently sold on.

Where a seller has not claimed capital allowances, which is commonplace, this will routinely result in an absurd situation. Instead of a buyer simply claiming capital allowances by virtue of having met the longstanding basic requirements to claim capital allowances, the buyer will *also* need to get the seller to agree to pool the expenditure. In effect, the seller will have to go through most of the motions of claiming capital allowances and agree to formally pass those allowances on to the buyer. If the capital allowances qualifying expenditure is not pooled by the seller in time then *no* capital allowances will *ever* be available to the buyer or *any future owner* of the property.

'Fixed Value Requirement'

Currently, when a property changes hands the buyer's capital allowances claim is generally calculated using a 'just and reasonable' apportionment of the purchase price (although the amount may be restricted by past claims made by previous owners of the property). This is a specialist tax valuation exercise routinely undertaken by The Capital Allowances Partnership Ltd that may be done many years after the property was bought. Alternatively, within two years of the transaction the parties have the option of negotiating an amount for the capital allowances and confirming this by a formal 'section 198' (or 'section 199') tax election.

Going forward it will be *preferred* that sellers and buyers agree a section 198 election to value the plant. Or if the parties cannot agree, either party can, within two years of the transaction, *unilaterally* refer the matter to a tax tribunal for an independent determination. In effect, either party can try to get the other to back down or be forced to incur the trouble and expense of going to a tribunal. Just like the 'pooling requirement', if a joint election is not agreed or the amount is not referred to a tribunal in time, then *no* capital allowances will *ever* be available to the buyer or *any other future owner* of the property.

What Action Should You Take?

If a property sale or purchase is contemplated, taxpayers and their advisers are strongly urged to promptly obtain expert capital allowances advice to safely navigate their way through the new rules.

Contact The Capital Allowances Partnership Limited immediately for free-of-charge and no obligation initial advice, tailored to your needs. Please e-mail our General Enquiries address info@cap-allow.com or call our General Enquiries number **0333 123 1203**.