

Capital Contributions to Tenants Fitting Out Works

Maximising Capital Allowances



Background

Landlords often have to offer incentives to tenants to take space in a vacant property. These incentives can take a variety of forms such as rent-free periods, marketing contributions or capital contributions to tenants' fitting out works. Many incentives, while representing a significant cost to the landlord, attract little or no tax relief. However, if structured correctly at the outset, the landlord can claim significant capital allowances in respect of tenants' fitting out works.

Issues

The first issue that needs to be addressed is the way in which the capital contribution is described in the Agreement for Lease or Development Agreement. It may seem obvious but as a minimum, it should be referred to as a "*capital contribution to tenant's fitting out*". However, this statement alone will not maximise the capital allowances potentially available to the landlord. Capitus has specific clause wording relating to this issue which can ensure that up to 100% of the contribution qualifies for capital allowances.

Secondly, once the correct clause wording has been included in the legal documentation, we must consider how the landlord may actually compute the capital allowances available on the contribution made. As a condition of making the contribution, the landlord can request that the tenant provides breakdowns of cost as well as floor plans and specifications, but this is not usually available in the required level of detail. Sometimes the tenant's fit out contractor may only give the tenant a single lump-sum invoice on completion of the works. Capitus has developed a compilation methodology that overcomes these problems and ensures that capital allowances are maximised on behalf of the landlord.

Consideration must also be given to determining the proportion of the contribution that may be deemed a reverse premium. This is of particular importance where the amount of the contribution actually exceeds the cost of the fit out to the tenant. Again, the methodology that Capitus uses will allow for this.

The final issues relate to the actual claiming of the allowances and agreement of the amounts claimed with HMRC. Capital allowances claimed in respect of capital contributions must be allocated to a separate pool under CAA 2001 s 538 (3). Once claimed, HMRC may contest certain points and resolving these issues is again something with which Capitus can assist.

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