



Negotiations with HMRC

Background

The availability of capital allowances on real estate assets in the UK is largely governed by CAA 2001. However as with most legislation, large areas of CAA 2001 are open to subjective interpretation; this is particularly true of property fixtures. The terms 'plant' and 'machinery' have never actually been defined in the legislation and the interpretation of what does and does not qualify is largely based on precedent case law and the interpretation of CAA s21-25. This, as may be imagined, can lead to HMRC taking an alternative view from that of the taxpayer, which results in claims having to be negotiated.

Roles of the parties

Once a claim is queried by HMRC, the Inspector of Taxes usually seeks assistance from either the District Valuer (DV), the Regional Building Surveyor (RBS), or both. The most common situation where this occurs is in relation to ascertaining the value of plant and machinery fixtures for both new build and second-hand investment property.

The Inspector of Taxes is responsible for agreeing whether or not a particular item of plant is eligible, but will take advice from the RBS on what the item is from a construction perspective and also the cost of the item in question.

The DV primarily becomes involved on second-hand acquisitions and his primary role is the valuation of the land element of the purchase price. The RBS also has an involvement here in checking the reconstruction cost estimate for the building element of the purchase price.

Negotiation strategy

In all cases, the key point of the strategy is the provision of appropriate information in support of the potentially contentious elements of the claim. Most importantly, this information should be collated contemporaneously. On new-build projects, this means both at design stage and throughout the construction phase, and on second-hand purchases when the transaction takes place.

Once the main points of contention have been established, HMRC may call a meeting with the taxpayer, which may also be attended by the DV and the RBS. This may also involve a tour of the property that the claim related to.

The taxpayer will be asked why they consider a particular asset qualifies as plant or machinery. A properly considered response will offer the greatest likelihood of acceptance and should include information on the following:

- A full description of what the item is and its full extent
- How the claimed cost has been arrived at
- The design rationale for why the particular item has been chosen
- The legislative and case-law basis that allows the item to be claimed
- Statement of the HMRC guidance relating to the item
- Counsel's opinion (if sought)

Once the respective positions have been established, HMRC may accept some or part of the claim on a 'without prejudice' basis. If at this point the taxpayer is not satisfied, the next stage is an appeal to the Special Commissioners. However, this can be a lengthy and costly process and can usually be avoided if a properly structured case can be presented in the first place.

Contact Kevin Meyer meyer@capitus.co.uk for more information.