

# Capital Allowances on Commercial Property

## What Solicitors Need to Know



### Background

The issue of capital allowances is now an integral part of every commercial property sale and purchase transaction. Solicitors need a thorough understanding of the relevant issues in order to protect their client's tax position.

The Commercial Property Standard Enquiries (CPSE.1) now include a specific section (Section 19) on capital allowances.

We have encountered many scenarios where even though the buyer of the property makes these enquiries and receives replies, the interpretation of the replies can lead to significant problems in terms of the buyer's entitlement to capital allowances.

### What problems can arise?

If a seller has claimed plant and machinery allowances for fixtures during his period of ownership of the property, he is required to bring into account a disposal value in respect of those fixtures when the property is sold.

Correspondingly, the buyer of the property will also be entitled to claim plant and machinery allowances in relation to the same fixtures but will be restricted to claiming, as a maximum, the disposal value brought into account by the seller.

This may seem relatively straightforward. However, establishing exactly what allowances the seller has claimed and attributing a value to those fixtures can be very difficult.

There is a mechanism within the capital allowances legislation which allows the buyer and seller to fix the disposal value of the plant and machinery on which allowances have been claimed by the seller. This is known as a CAA 2001 s198 election. Its use is becoming more widespread; however, as a general rule it is more beneficial to sellers than buyers. Solicitors may often find that the seller is attributing a value of £2 in respect of plant or machinery (£1 to main pool plant and machinery, £1 to special rate pool plant and machinery), which allows the seller to retain not only all of the allowances they have received to date but all of the remaining plant and machinery allowances in respect of their original claim, even after the property has been sold.

The problem here is that the seller may have only claimed a minimal amount of relief compared to his entitlement, and if the section 198 election is not worded correctly this may preclude the buyer from claiming any additional plant or machinery allowances.

This is just one problem that can arise during pre-contract negotiations on capital allowances; other areas where care must be taken include, to name but a few:

- contributions made to tenants' fitting-out works.
- special structures to minimise the impact of SDLT, which may have a negative impact on the availability of capital allowances.
- long leasehold interests being acquired out of a superior interest in the property.
- the availability of industrial buildings allowances.

We strongly recommend that pre-contract enquiries are passed on to a specialist capital allowances advisor as opposed to the client's accountants. Furthermore, for dealing with specific contractual positions, we recommend the use of standard capital allowances clauses where appropriate.

For more information, please contact Aubrey Calderwood [calderwood@capitus.co.uk](mailto:calderwood@capitus.co.uk)