



# CAPITAL ALLOWANCES

## Your questions answered around the new legislation changes

Although capital allowances is quite high on the pecking order when acquiring commercial properties, their importance should ascend to arguably the most urgent, due to changes introduced from April 2014.

### What are Capital Allowances?

Capital Allowances is the main form of statutory tax relief available on capital expenditure incurred on various fixtures within a building. These allowances are used to reduce the tax payable each year in the UK.

### What is changing from April 2014?

Previously there was no time limit for claiming capital allowances following the transfer of ownership of a commercial property asset. We simply had to research the ownership / tax history as far back to 24 July 1996 to satisfy HMRC that there had been no prior claim made by any previous owners. However, from 1 April 2014 (6 April 2014 for income tax payers), in order to claim capital allowances, the purchaser may need to ask the seller to 'pool' any qualifying expenditure. In addition, both parties will have to agree the value that will be transferred upon sale, via a s.198 election within a two year time period.

### Who can claim Capital Allowances?

Capital allowances are available to all investors and occupiers liable for UK tax, including:

- UK based companies and individuals investing in assets at home or abroad; and
- Offshore or foreign companies and individuals investing within the UK.

The effect of the changes will mean that a buyer will only be entitled to claim capital allowances on the acquisition of a property where:

- The past owner (as a tax paying entity) has allocated its expenditure on the fixtures to a capital allowance pool prior to the sale of the property, or they have claimed a first year allowance in respect of its expenditure (the Pooling Requirement); and
- A Capital Allowances Act 2001 s.198 election is entered into by both the buyer and seller within two years of the buyer's acquisition of the interest in the property, to agree the value of the allowances taken on board by the purchaser.

If agreement cannot be reached by both the buyer and seller, they will have to refer the matter to a tribunal.



## Which transactions and issues will not be affected by the revised legislation?

- The grant of a leasehold interest for a capital sum – where the right to the allowances is not passed to the lessee.
- The entitlement of buyers who acquired prior to April 2012 and who continue to own the property.
- Capital allowances relating to capital contributions.
- Purchase of an SPV (although the SPV itself may come under the revised legislation).
- The purchase of a new unused property from a developer trader.
- Pension fund purchasing a property from a pension fund where no prior qualifying owner had owned it.
- The entitlement of buyers who acquire a property from a pension fund where no prior qualifying owner had owned it.
- The entitlement of a buyer to claim integral features on a property, where the seller or a prior owner was not entitled to claim integral features.

## Who will win/lose out of these new legislation changes?

### Winners

- Sellers of properties 'rich' in fixtures, who are chargeable to UK tax and who have not pooled the allowances because there was insufficient income. Clearly there is a deal to be done here with the purchaser.
- Sellers who are not chargeable to tax such as pension funds where there have been no prior owners, because the property will typically be more attractive to purchasers compared to a similar property being sold by a seller who is within the charge of tax.

### Losers

- Buyers of properties from April 2014 onwards where the most recent qualifying owner back to April 2012 had not pooled the allowances.

## What would you recommend?

It is imperative that due diligence is carried out by both parties when looking to buy or sell a property as early consideration of these changes will be essential in avoiding the potential loss of capital allowances, which could be significant.

This can assist with the sales negotiations and in some cases increase the sale price. If nothing else it might make the deal seem more appealing to a tax paying entity that is carrying huge trading profits.

Therefore, it will be crucial to obtain professional capital allowances advice prior to exchange of contracts.

## KEY CONTACTS

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