



RENNIE WELCH

accountants : audit . tax . investment . IT

Partners:

Gordon S Chisholm CA
Colin Crombie CTA
Gill Adamson BSc (Hons) CA CTA
Martin S Thomson FCCA
Mark Thompson CTA ATT

Associates:

Steven A Reid CA

Consultant:

George H Young BA CA

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Commercial property – new capital allowances considerations

New rules were introduced in April 2012 for capital allowances on fixtures in commercial property and whilst there is a transitional period to April 2014 for certain aspects of the changes the rules are now in force for most property transactions. In this briefing note we will set out an overview of what is changing and then consider the position for both buyer and seller.

The rules relate to fixtures which have become part of the property as a matter of law and do not concern loose items of plant and machinery. Examples include central heating systems, hot and cold water systems, electrical systems, sanitary ware and air conditioning. Fixtures and features integral to the building are covered by the changes but are the subject of different rates of allowances.

The capital allowances on fixtures can be very valuable in minimising exposure to tax and anybody involved in buying or selling property should be aware of how the capital allowances position may affect the transaction. In many ways the new rules will over time simplify the position but there are traps for the unwary.

Changes

The initial change in relation to transactions after 6 April 2012 concerned property on which the vendor had claimed capital allowances on fixtures. In these cases the purchaser will only be able to claim capital allowances on fixtures if the transfer value is formally determined. This is known as the "fixed value requirement". This will generally be dealt with by using a joint election between buyer and seller, within two years of the acquisition of the property.

From April 2014 a further requirement will be introduced for the purchaser to be permitted to claim allowances for fixtures. This will be known as the "pooling requirement" and will mean that the seller must bring the costs of fixtures into the capital allowances calculations and then also bring in a disposal value.

Considerations for sellers

The prospective sale should be used as a trigger to consider capital allowances issues in relation to the property and to make claims if they have previously been overlooked. Even if the business has incurred losses and there is no immediate tax advantage in making a claim, the allowances may be valuable to the purchaser.

The vendor should consider assets on which allowances have been claimed, other assets on which allowances were not claimed, perhaps because they relate to 'integral features' for which allowances have been available only since 2008; and assets on which claims have been overlooked.

Where allowances have already been claimed by the seller, the buyer will only be able to claim allowances if the value is fixed, by election or failing that tribunal, which improves the negotiating position of the seller.

The elected figure for fixtures can be anything from £1 to the original cost of the asset. HMRC cannot impose a figure and it is a matter to be negotiated between buyer and seller. It is to be expected that most taxpayers will wish to agree a figure rather than meet the cost of a tribunal. Most sellers, it would be anticipated, will wish to agree a figure no higher than the capital allowances written down value, to avoid a claw back of allowances previously claimed.

As regards assets on which allowances have not been claimed, the vendor may lodge a late claim to writing down allowances, or may agree not to make a claim in the hope of negotiating an enhanced sale price for the property due to the allowances becoming available to the purchaser, but this option will be unavailable after 2014.

Considerations for buyers

The changes to the rules are potentially more significant to buyers and their advisers as if the necessary steps are not taken at the time of purchasing the property, the right to claim allowances may be lost.

The buyer, or his adviser, should make the necessary enquiries of the seller to ascertain the nature of the assets, claims already made and should also ensure the transfer value is formally agreed by valid election. From April 2014 the pooling requirement should also be met.

The new rules are a sharp change from the old regime, where a 'just and reasonable apportionment' was often used by a purchaser to apply an element of the acquisition price to fixtures, in the absence of an election to the contrary. The issue should now be a significant consideration at the time of commercial property transactions and advice should be taken by both buyer and seller, to protect their respective tax positions.

If you require further guidance in relation to a property transaction or advice on your capital allowances position please contact Mark Thompson on 01573 224391 or mark.thompson@renniewelch.co.uk.

For further details please telephone 01573 224391 or email: mail@renniewelch.co.uk

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- gordon.chisholm@renniewelch.co.uk
- colin.crombie@renniewelch.co.uk
- gill.adamson@renniewelch.co.uk
- martin.thomson@renniewelch.co.uk
- mark.thompson@renniewelch.co.uk

- steven.reid@renniewelch.co.uk

- george.young@renniewelch.co.uk

Rennie Welch LLP
Academy House
Shedden Park Road
Kelso
Roxburghshire
TD5 7AL

www.renniewelch.co.uk