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### Capital Allowances on Commercial Property

When buying or selling a business property it is important to consider the tax implications of the plant and machinery contained in the building. It is possible for owners of commercial property to claim capital allowances for qualifying fixtures and this can often allow business owners to obtain a substantial tax deduction for part of the price they pay for a property. Fixtures are items which have become part of the building in law and do not concern loose items of plant and machinery. Unfortunately if the rules are ignored this can result in fixtures no longer qualifying for allowances for all future owners of the property over the whole lifespan of the building.

Qualifying fixtures can include hot and cold water systems, heating systems, electrical systems including lighting systems, fire prevention equipment, kitchens and sanitary ware and can be found in every commercial building including offices, furnished holiday accommodation, care homes, hotels, factories, retail units and warehouses.

New rules governing the ability to claim these allowances came into force in April 2012 and became fully operational from April 2014. Although these rules are very complex, good and timely advice can result in significant tax savings or avoid costly mistakes.

The main requirements of the new rules are as follows:

1. The **fixed-value requirement** - where the previous owner has claimed allowances, the part of the price apportioned to fixtures in the building must be fixed either by agreement between the seller and buyer in the necessary form (using a capital allowances election) within the necessary timeframe or by applying for a determination by the First-tier Tribunal within the required time frame.
2. The **pooling requirement** – for transactions since 1 April 2014, this rule stipulates that if the seller could claim allowances they should have 'pooled' expenditure on fixtures before a property is sold.

A disposal value requirement will apply in very limited circumstances where a statement of the prior owners disposal value is needed.

It is very important to note that failure to satisfy the new rules can result in the new owners (and all future owners) qualifying expenditure on the fixtures contained in the building as being deemed to be nil. This would result in no future owner being able to claim the allowances and could have the knock on effect of lowering the value of the building going forward.

However if purchasing from a non-business seller who can warrant that they were not eligible to claim capital allowances the purchaser could potentially make an unrestricted claim based on a just and reasonable apportionment of the purchase price. This would depend on the ownership history of the building and is best addressed before the purchase is complete. However it may be possible to make retrospective claims in certain circumstances.

Areas to consider for sellers will include the following:

1. If sellers can claim allowances there is the requirement for them to include their expenditure on fixtures in their tax computation (even where they have not and do not wish to claim the allowances themselves) otherwise no allowances will be available for future owners which consequently may influence the sale price and affect the value of the property.
2. In situations where a seller has not claimed allowances and is happy for them to pass to the buyer, they will be required to pool the expenditure and also make an adjustment in their tax computation to reflect the allowances that are to pass to the buyer.
3. If sellers have claimed allowances it is likely that they will wish to agree a figure no higher than the capital allowances written down value, to avoid a claw back of allowances previously claimed. Any value greater than this could result in a tax charge. This is a matter which will be negotiated between the parties to the sale.

Areas to consider for buyers will include the following:

1. The onus to establish the right to claim capital allowances is on the buyer.
2. Purchasers should obtain details of the seller's capital allowance claims history on all assets within the building (and the history of previous owners where possible) and should ensure that the fixed value and pooling requirements are met where applicable.
3. It is possible for the requirements to be agreed up to two years from a purchase but sellers may be reluctant to cooperate after the sale is agreed without a contractual obligation. It is therefore advisable to deal with this as part of the legal process of the property purchase.
4. Any capital allowance election, must be in the correct form as set out by the legislation and must contain sufficient detail to recognise all the relevant plant and machinery fixtures. If it contains any errors it may not be considered to be a valid election resulting in all future allowances being lost. Applying to a tribunal may avoid this uncertainty.
5. Where the buyer is tax-exempt or cannot claim capital allowances themselves, they should still consider the future capital allowances position as details would become necessary for a future sale and the potential value of allowances should be protected for future owners.

This note is just a brief summary of the complex rules and appropriate advice should be taken when buying or selling a commercial property. If you require further guidance in relation to a property transaction or advice on your capital allowances position please contact Mairi Drummond on 01573 224391 or [mairi.drummond@renniewelch.co.uk](mailto:mairi.drummond@renniewelch.co.uk).

