

CAPITAL ALLOWANCES

Capital Allowances are a form of tax relief which can be claimed in respect of assets which have been purchased as part of a commercial property transaction. These assets are known as fixtures and fittings. These allowances can be set off against income tax or corporation tax, depending on which tax the purchaser is subject to. When a property is purchased it may be that fixtures are included within that purchase and it may therefore be possible to claim capital allowances in respect of these assets. However, in order to claim capital allowances on these assets certain criteria must be met for transactions completing after 1 April 2014.

The main criteria are that:

1. the seller of the property must have included the qualifying expenditure within a tax return prior to the sale, therefore notifying H M Revenue & Customs that a capital allowances claim may be made in respect of the fixtures and fittings. This is known as pooling.; and
2. the seller and purchaser must agree on a value to be allocated to the fixtures and fittings included within the purchase and this value must be notified to H M Revenue & Customs within 2 years of the purchase. This will be a portion of the purchase price, for example a property may be purchased for £1 million and the buyer and seller may decide to allocate £200,000 of that price to the fixtures and fittings within the property which are eligible for the purposes of capital allowances.

As part of the searches and enquiries carried out prior to the purchase, the seller should answer questions on capital allowances which should reveal whether the first criterion is met and which should give an indication as to the likely value of the eligible fixtures and fittings in terms of the second criterion. It is very important that these questions are answered fully and correctly and you should seek advice from your accountant/tax adviser in relation to these queries.

In order to meet the second condition, you must reach an agreement with the seller as to the portion of the purchase price which is to be allocated to the fixtures and fittings eligible for capital allowances included in the purchase. The seller's answers on capital allowances may enable the purchaser to have a good idea of the value which should be allocated to the fixtures and fittings, but we would advise that you seek specialist tax advice on the appropriate value to be allocated. This is particularly important as it is not the case that the value to be allocated will simply be the value of the fixtures and fittings as at the date of the sale. Failure to review this could have a significant tax impact.

The general rule is that the purchaser would prefer a higher value to be allocated to the fixtures and fittings and the seller would prefer a lower value. However, this statement is dependant upon the position of both parties. It is important to get the value correct as getting it wrong could result in the purchaser not being able to claim tax relief on the basis of the capital allowances which should have been available to it, or could even result in the seller having to pay additional tax to H M Revenue & Customs if the seller has claimed capital allowances and too high a value is put on the fixtures and fittings.

It is important that these points are resolved prior to exchange of contracts as if these conditions have not been met then it will not be possible for you, or a future purchaser, to claim capital allowances in respect of the fixtures and fittings included in the sale and this could affect the future saleability of the property.

Please note it is not possible for all purchasers to claim capital allowances, for example pension funds are not currently eligible to make a claim. In addition, there are certain other criteria which must be met, including that the purchaser must operate a trade or profession (although this includes holding the property as a commercial investment) from the property being purchased. It may be that you are not eligible to make use of the capital allowances yourself. However, it is still important to ensure the appropriate criteria are met to ensure future owners will be able to make use of the capital allowances available. If you ever wanted to sell on the property and the capital allowances position had not been reviewed then a potential purchaser may be put off or may insist on a lower purchase price because capital allowances are not available.

It can take some time for an agreement to be reached on the value to be allocated to the fixtures and fittings included in the purchase and for the seller to make the necessary arrangements to comply with the first condition. Therefore it is important to consider this point as soon as possible and to obtain advice on the value of the fixtures and fittings at the outset. You will need to inform us when you have reached an agreement or had advice on capital allowances so we can deal with these points in the legal documentation.

Please note that Fraser Brown will not be responsible for reaching agreement on these matters and will only deal with documenting any agreement reached on the value to be allocated to the fixtures and fittings eligible for capital allowances. It is therefore crucial that you seek specialist advice on these matters as soon as possible.

If you do not currently have professional advisers who can assist you in relation to the allowances available at the property then please let us know and we can put you in contact with specialist advisers. Contact us on 0115 9888 777.

