Capital Allowance

Changes could cause buyers to lose tax reliefs

From 1st April 2014 changes in the Capital Allowance rules could stop buyers of buildings from obtaining capital allowances. After April 2014 capital allowances will only be available to a buyer of a building containing plant and machinery if in the past an owner has 'pooled' the relevant expenditure in a chargeable period when it owned the property.

Other than for new buildings, the pooling rules will apply to property acquired by corporate taxpayers on or after 1 April 2014 and for income taxpayers on property which is acquired on or after 6 April 2014.

Capital allowances are tax reliefs in respect of expenditure on plant and machinery. This includes plant and machinery that are a fixture or part of a building, such as lifts, heating, air conditioning and sanitary ware. Allowances are available at 8% on plant and machinery that is designated as an integral feature of a building such as a lift, but at 18% on other plant and machinery, such as kitchen equipment. Fixtures designated as environmentally beneficial technologies can be eligible for up to 100% tax allowances.

When a building containing qualifying plant and machinery is bought, capital allowances will usually be available to the buyer. The amount of capital allowances available will depend on the price paid for the building and the value agreed between the seller and the buyer for the fixtures and fittings.

As from April 2014, a seller will have to pool its expenditure on plant and machinery in a chargeable period when it owns the building in order for the allowances to be passed on to the buyer. Pooling means adding the expenditure to the seller's pool of expenditure qualifying for capital allowances, although the seller does not have to actually claim the allowances. The pooling requirement will only apply to a seller who was entitled to claim capital allowances and not to a non taxpayer such as a charity or pension fund or to a seller holding property as a trading asset.

If the seller has was entitled to claim the capital allowance but has not done so, the buyer will need to make sure that the seller agrees in the sale documentation to pool its expenditure. If the seller is not entitled to allowances, for example a pension fund or other non tax payer, the last owner of the property who was entitled to claim allowances (and owned the building at some point after April 2014) would need to have pooled the expenditure in order for the allowances to be available to a subsequent buyer. Buyers will need to find out about the seller's capital allowance position as early as possible to preserve the capital allowances.

An election must be made by the seller and the buyer within two years from the date of completion of the purchase setting out the value attributed to the fixtures, or, if they cannot agree, an application made to the Tax Tribunal for this value to be determined. The election is made under section 198 Capital Allowances Act 2001 or section 199 in the case of the grant of a lease.

If the election is not made, or a direction from the Tax Tribunal applied for within the two year period, the buyer and any subsequent buyer will not be able to claim capital allowances.

Where an election is made, the seller will be required to include the value made in the election as a disposal value in its capital allowance calculation, and the buyer should be able to claim allowances on this amount.

An election can still be made if a non-taxpayer or a property trader buys a property from someone entitled to claim allowances. If an election is not made, the fixed value requirement can be satisfied by obtaining a written statement from the non taxpayer or property trader, stating that an election was not made and can no longer be made and a written statement from the person who sold the building to the non-taxpayer or trader showing the sale value.

Non-taxpayers such as pension funds need to pay attention to the capital allowance position and obtain the necessary information when they buy properties, even though they cannot claim allowances, they can preserve the value of the allowances and thereby increase the value of the property to future buyers.