

Capital Allowances When Selling A Property

The issue of what action you need to take regarding capital allowances, when you are selling a property, depends on whether you as the vendor have already made a claim for capital allowances. It also depends on the type of capital allowances you have claimed.

For both plant and machinery and industrial building allowances, if you have not made a claim then the contract should not include any clauses relating to capital allowances. You should still complete the CPSE's to the best of your knowledge.

Industrial Building Allowances

Prior to the Finance Act 2007 the sale of the freehold (or other relevant interest) in an industrial building would have triggered the repayment of some or all of the IBA's that had been claimed. From 21 March 2007 there are no balancing adjustments on the sale of an industrial building. This means that no action needs to be taken to prevent the claw-back of an IBA's claimed.

Plant and Machinery Allowances

The rules for P&M claims are, however, more complex. The buyer and seller now have the opportunity to agree between them the value of the plant and machinery allowances, subject to a number of conditions by means of an "Election". This is covered by CAA 2001 section 198 & 199.

In theory, a CAA 2001 section 198 election should be a straightforward process; in practice, however, it seems to cause a degree of confusion which can lead to a loss of tax allowances, usually for a purchaser.

A section 198 election is an agreement between the buyer and seller on the proportion of the sale price that should be attributed to the plant and machinery fixtures. The key points are:

- The elected amount cannot exceed the lesser of the claim of the seller or the actual sale price.
- There is no set formula or method for agreeing the "Elected value". It is purely a matter of negotiation between the buyer and seller.
- An election must be made by notice to HMRC within two years of the date of completion of the sale of the qualifying interest.
- The election must state the elected amount, the names of the parties to the election, information to identify the plant and machinery (ideally a list), details of the property, the interest acquired and the tax district of the parties to the election.
- The Election should also contain sufficient information to enable the correct allocation of the plant and machinery items into the Special Rate Pool –Integral Features and Long Life Assets and the Main Pool – general plant items.

In practice, where a property is being acquired, it is always worth checking that the vendors have actually claimed capital allowances or, if they have made a claim, to check that they have claimed on all the items of plant and machinery within the property. It is not unusual for someone to claim on refurbishment expenditure but not claim when they actually purchased the building.

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The tax rates of the two parties should also be considered, as it may be advantageous to leave the allowances with the party with the highest tax rate, providing the benefits of doing this are shared.

With the new rules that came into effect from 1st April 2008, there could also be some items of plant and machinery (integral and environmental features) within the property that were not previously allowable. This could include:

- Parts of the electrical installation.
- Cold water systems.
- Environmentally-friendly features such as Brise Soleil.

Other key points

If a new building is being acquired on a leasehold interest from an investor / developer it may be necessary to get a CAA 2001 section 290 election in order to ensure that an IBA claim can be made as the leasehold interest may not be the relevant one- see CAA 2001 sections 286 and 287.

A Section 198 Election is usually to the advantage of the seller. An Election does make matters simpler but a purchaser does not have to accept the proposed “elected value” – it is always a matter of negotiation.

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