

## Capital Allowances Elections

The issue of capital allowances elections is not always straightforward and errors can sometimes prove to be costly. The purpose of this guide is to set out, for each type of election, the key points of practice and potential problem areas.

There are three main situations where a capital allowances election may be considered:

- Where the lessor elects to transfer entitlement to allowances on plant and machinery fixtures – CAA 2001, section 183.
- On the sale of a property where the buyer and seller agree to apportion the sale price for plant and machinery fixtures – CAA 2001, section 198.
- An election to treat the sale of a lease as the sale of the relevant interest for Industrial Building Allowances' purposes – CAA 2001, section 290.

In each case it is important that the correct procedures and time limits are adhered to in order for the election to be valid.

### Section 183 Elections

An election under this section is needed if a building is constructed on, for example, a freehold interest and a long lease is subsequently granted for a capital sum that in whole or in part is for the provision of fixtures. It is only needed if the lessor is entitled to an allowance or would be if he were within the charge to tax.

A section 183 election is not needed where a property is bought from a developer on a long lease, providing the provisions of section 184 apply (i.e. the lessor could not claim because he is a developer and the building has not been used for a qualifying activity).

A section 183 election must be made by notice to HMRC within two years of the date of the lease in order for entitlement to pass to the lessee.

### Section 198 Elections

In theory, a 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:

- A section 198 election only applies if the vendor is required to bring in a disposal value for the plant and machinery fixtures. This is only required if a claim for plant and machinery has been made by a vendor. If no claim has been made on the fixtures then a section 198 election cannot be made.
- The elected amount cannot exceed the lesser of the claim of the seller or the actual sale price.
- 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.

In practice, when a property has been 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.

A vendor may want to include a low value such as £1 but the purchaser does not have to accept this and the agreed value is a matter for negotiation.

## 4-thought

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 1<sup>st</sup> April 2008, there could also be some items of plant and machinery 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.

As this additional claim will be based on an apportionment of the purchase price, it is important that expert advice is sought to ensure a valid claim at the highest value.

### **Section 290 election**

This type of election relates to a claim for Industrial Building Allowances: although these are being phased-out, there are still valuable allowances to claim.

If a long leasehold interest is acquired that has recently been created out of a relevant interest, it is not possible to make a claim for IBA's unless a section 290 election is made by the lessor. Providing the lease is over 50 years and is still within a two year period since the lease took effect, it should be a straightforward exercise to complete this election. Again, this must be made by notice to HMRC within two years of the date of the lease taking effect.

It is of particular importance to ensure a section 290 election is entered into when a property is acquired new from a developer. A section 198 election to claim plant and machinery would not usually be required and if the units are not yet let, the need for a section 290 election could be overlooked.

### **Summary**

Elections do not have to be a complex matter and provided due consideration is given, it is unlikely problems will occur.

It is good practice to include the draft election and appropriate clauses in the sale contract with formal documents being signed as part of the completion process. A section 198 election should, wherever possible, include a list of the plant and machinery fixtures on which the claim is being made.

Where a section 198 election has been agreed, the purchaser should always check to establish if any items of plant have been excluded from the election so that a section 562 apportionment claim can be carried out.

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