The "New Fixtures Rules"

Summary

The Capital Allowances Act experienced a long overdue reform, initially introduced in the Finance Act 2012 and brought into full effect from April 2014. Given it is over two years since full introduction, then why are we still talking about the 'new rules' and why is there still some confusion over the changes?

Key Points of interest

- Since April 2014 the vendor is required to satisfy the "pooling requirement" for all fixtures they are entitled to claim capital allowances on and also to satisfy the "fixed value requirement" with the purchaser.
- Failure to act within the correct time frame will lead to a loss of the capital allowances.
- The Sale & Purchase Agreement seems the most logical place for these requirements to be set out.
- Solicitors and Accountants need to ensure that the correct processes are followed since mistakes or omissions will lead to a loss of the capital allowances.

The Changes

It seems some time ago now, when the Finance Act 2012 introduced new capital allowances rules affecting those buying or selling commercial property.

The statutory changes have been outlined within the capital allowances act; CAA 2001, s 187A and s 187B. Generally, the rules require the parties to set out the need to meet a 'pooling requirement' which is to fix the amount of capital allowances based on the consideration paid by the first person who was entitled to claim the capital allowances, coupled with the requirement to then fix the value of the allowances to be transferred to the purchaser.

The pooling requirement means that the vendor will need to 'certify' the level of capital allowances and pool them; essentially, they are taking ownership of the allowances.

They do not need to use the allowances and can therefore pass the benefit to the purchaser by satisfying the fixed value requirement; via a CAA2001 s.198 election.

On the face of it, the process seems straightforward and workable; however, in practice there are many factors which should be brought into consideration.

The Confusion

In part, the confusion has been caused by an already complex capital allowances regime. The changes tackled areas going forward but did not deal with the already complex regime which has for some time been complex and not fully understood. However, a complete overhaul of the capital allowances act to make the matter of claiming more straightforward could lead to greater application of tax relief and as such, something which may not appeal to either HMRC or the Government.

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Arguably, the changes had been introduced to prevent some opportunist firms who were "double claiming", which appeared to be on the rise, something which HMRC seemed unable to prevent. It was not introduced to penalise those who were rightfully entitled to claim the capital allowances.

However, the biggest area of confusion is whose responsibility it is to ensure the correct processes are followed, this is with respect to the professionals involved and indeed, the parties concerned.

Finally, as stated earlier the capital allowances regime was already complicated. The changes which state that the capital allowances must first be pooled by the owner of the property who has become entitled to claim capital allowances seems straightforward enough; however, this is also more complex, for example, what about those who purchased the property prior to April 2008 and could not claim certain Integral Features or indeed, a less common instance when an owner of an industrial building (or hotel) was not able to realise all the building allowances before they had been phased out.

The responsibilities

In order to claim capital allowances on the acquisition of property, input is required by solicitors, accountants and surveyors who are experienced with the legislation. However, there is no real definition as to who should provide input and when.

With regards to solicitors, they will be best to ensure the application of the relevant contract clauses; however, they often require guidance from the accountants regarding the previous claim history, as well as guidance from the surveyors to ensure the correct questions have been asked (or answered in CPSE enquires / replies).

The accountant will be familiar with the tax computations and of course accountancy principles but given the complexities of capital allowances they may require input from a suitably experienced capital allowances specialist / surveyor.

Consideration is also needed to who instigates the capital allowances review, if the vendor has not claimed capital allowances and has agreed to pass on the full benefit to the purchaser; should the exercise be instigate and indeed, paid by the purchaser?

The vendor could still claim the tax relief for the last year in which they owned the property and possibly also for the previous tax year, as such, should they then take some of the benefit passing the tax written down value to the purchaser?

The vendor should also be cautious that the capital allowances review is within expected parameters of such a property. An overly aggressive claim may not impact them directly with regards to interest payments / penalties (given they are not taking any benefit) and any subsequent costs may be covered by the purchaser. However, the fact remains that it is the vendor's tax computations that may be reviewed and as such, HMRC will have the right to question any aspect of computations.

The capital allowances will be decided by negotiation and which of the parties involved wants the allowances more, there of course is the possibility of reverting to the first tier tax tribunal to ask them to fix the value; however, let's not go there!

A capital allowances specialist can assist both vendors and purchasers as well as their other professional advisors to ensure that the subject is adequately addressed at the contract stages, and despite the complexities their initial involvement could lead to a satisfactory conclusion quickly, with the after process of claiming and providing the fixed value requirement coming once the purchase has concluded.

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