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## A BONUS FOR PROPERTY INVESTORS - INTEGRAL FEATURES

### Introduction

When a seller has claimed Capital Allowances he generally wants to retain them, so he is usually insistent that the buyer enters into an election under the Capital Allowances Act 2001, Section 198, fixing the level of Capital Allowances that pass from seller to buyer. It is quite common for the contract figure to be £1, meaning that the buyer is effectively denied any Capital Allowances. From April 2008, however, buyers will be entitled to Capital Allowances on building fixtures (termed integral features under the new rules) that did not previously qualify. These additional allowances are available to the buyer irrespective of the actions of the seller. The allowances are likely to be substantial, but they can only be properly calculated employing specialist valuation techniques.

The Finance Act 2008 (FA 2008) introduced a new category of machinery or plant qualifying for Capital Allowances, entitled integral features. The Capital Allowances Act 2001 (CAA 2001) was amended by FA 2008, Schedule 26, which added a new Section 33A. This new section sets out a list of integral features that qualify for Capital Allowances at 10% per year on a reducing balance basis as follows:

- (a) An electrical system, including a lighting system.
- (b) A cold water system.
- (c) A heating, ventilation or air-conditioning system.
- (d) A lift, escalator, or moving walkway.
- (e) External solar shading.

Of the above items, generally only (c) and (d) would previously have qualified in full for Capital Allowances. Anyone that acquired or developed property prior to April 2008, therefore, (the effective date of this new legislation) would not have been able to claim allowances on (a), (b) or (e).

The relevance of the above to property investors is that for acquisitions made from April 2008 (1 April for corporation tax and 6 April for income tax) there will certainly be Capital Allowances available to the buyer, irrespective of what was agreed with the seller at contract stage. Furthermore, these allowances are likely to be substantial.

By way of illustration, let us consider the recent acquisition (post April 2008) of an office property in central London for £20 million.

The seller had acquired the property from the developer in 2004 and had made a full claim for Capital Allowances. In the contract it is stipulated that the apportionment of the sale price applicable to plant and machinery is £1 (one pound). Furthermore, the buyer and seller enter into an election in accordance with CAA 2001, Section 198, to substantiate the £1 apportionment for 'all the plant and machinery in the building'.

Notwithstanding the above, it is not possible to fix the apportionment, either within the contract or by a Section 198 election, for items of plant and machinery that have not been included in a claim by the seller. As the seller could not have claimed for the whole electrical installation (only parts of it), the cold water system, nor the brise soleil (external solar shading), the buyer can make a claim for these items (assuming they are present) based on a just apportionment of the £20 million purchase price. In our example, the apportioned value of these three items amounted to £1.8 million. At a corporate tax rate of 28%, these allowances represent a total tax saving of £504,000 equivalent to a 5% discount on the purchase price.

How this total tax saving flows through to the buyer will depend on various factors but, assuming that the Annual Investment Allowance of £50,000 (also introduced by FA 2008) was set against this property, allowances of £225,000 will be available to the buyer for set off against tax in the first year of claim. Not bad when one considers that prior to April 2008 the buyer would have got nothing!

Additionally, due to the nature of these integral features, even properties that would not previously have warranted consideration from a Capital Allowances perspective should now be considered. For example, even high street retail units will usually contain electrical and cold water systems.

So how does a buyer take advantage of this exciting new opportunity? Well, the good news is that the benefit to the buyer is not dependant on any action by, or agreement with the seller. The buyer will be entitled to these allowances irrespective of what is agreed with the seller when the property was acquired. As, however, there will be no figures available to the buyer on which to base a Capital Allowances claim for these unclaimed items, the buyer will need to carry out a just apportionment of the purchase price applicable to the relevant items, as required by CAA 2001, Section 562. It must be borne in mind that there is no point agreeing any apportionment with the seller for the unclaimed items as it will not be binding on HM Revenue & Customs (HMRC). In fact, HMRC may consider any claim that is not based on their approved methodology (as utilised by the Valuation Office Agency - advisers to HMRC) to be carelessly prepared, resulting in possible penalties, as well as interest if an excessive claim is made.

Our Banking Tax and Finance team have 40 years experience of preparing Capital Allowances claims for property buyers. The claims we prepare are based on the approved methodology of the Valuation Office Agency and are, therefore, readily approved and accepted by HMRC. Not only does this ensure that the allowances available to the buyer are accurately and correctly computed, it also means that the buyer can view the claim as low risk from a tax compliance viewpoint. This means that the claim should be agreed promptly with HMRC with little, if any negotiation and subsequent reduction to the allowable expenditure.

For further advice concerning any of the issues raised in this briefing, please contact one of our key individuals detailed overpage, or alternatively call our helpline on 0800 526262. Information on other property tax related topics can also be found on our website at <http://bankingtaxfinance.davislangdon.com>.

