



KEY CONTACT



Satnam Kainth
0121 710 1305
satnam.kainth@
davislangdon.com

OTHER CONTACTS



Tim Beresford
0121 710 1333
tim.beresford@
davislangdon.com



Andy White
020 7061 7153
andy.white@
davislangdon.com



David Henry
0141 248 0307
david.henry@
davislangdon.com



David Rees
023 8068 2801
david.rees@
davislangdon.com



John Goldrick
0161 819 7646
john.goldrick@
davislangdon.com

CURIOUSER AND CURIOUSER THE EVER CHANGING DEFINITION OF 'DWELLING HOUSE'

Introduction

There is a minor storm brewing up around the meaning of 'dwelling house' as HM Revenue and Customs (HMRC) prepares, imminently, to 're-clarify' its view in relation to the availability of plant and machinery, as a result there is a small window of opportunity for some.

Once upon a time life in the world of capital allowances was relatively simple. We all knew that we couldn't claim capital allowances on plant and machinery in 'dwelling houses'. After all, Section 35 Capital Allowances Act 2001 (CAA 2001) is quite clear... 'expenditure is not qualifying expenditure if it is incurred in providing plant or machinery for use in a dwelling house'.

The fact that the term dwelling house was not properly defined (ignoring the oblique reference to the Rent Act 1977) didn't really matter, as we all knew what it meant, didn't we? The guidance given in the HMRC manuals at paragraph CA11520 was quite clear: 'A dwelling house is a building, or part of a building, which is a person's home. A person's second home or holiday home is a dwelling house, as is a flat that is used as a residence. A block of flats is not a dwelling house although the individual flats within the block may be. University halls of residence, accommodation used for holiday letting, a hospital, a nursing home or a prison are not dwelling houses'.

So we happily claimed on the following types of property, because although people do live in them, they did not become their 'homes' in the everyday meaning of the word:

- Nursing and care homes
- Hospitals
- Prisons
- Hotels and B&B premises
- University halls of residence and other purpose-built student accommodation
- Common areas within blocks of flats

We did not, however, claim capital allowances on the following, as these were clearly on the wrong side of the dividing line:

- Buy-to-let flats and houses
- Houses in multiple occupation

Then along came R&C Brief 66/08, issued on a quiet 29 December 2008.....

Apparently concerned at the rising cost of capital allowance relief to the Exchequer due to the booming student accommodation sector, HMRC sought to 'clarify our view on the application of CAA 2001, Section 35 to university halls of residence and similar facilities'.

Having taken legal advice, the Brief advised that HMRC had updated their view and now considered that individual study bedrooms are dwelling houses, while common areas such as shared kitchens and living rooms are not.

Crucially, the Brief included the following paragraph:

'This view extends to other types of multiple occupancy accommodation, such as those provided to key workers'.

'Run that by me again', I hear you say? '... other types of multiple occupancy accommodation ...' 'They surely don't mean HMOs, do they?' They probably didn't intend to, but too late - you can already hear the 'roaring' sound of all that valuable tax relief gushing through the open floodgates.

Having set out to limit the tax relief available on student accommodation, R&C Brief 66/08 inadvertently extended it to elements of the buy-to-let sector. Even worse for HMRC was that due to the prolonged consultation, followed by the calling of the election and then the forming of the new coalition Government, their stretched resources were not able to publish the promised update to the guidance in the CA Manuals.

So for the time being, taxpayers have the best of both worlds, in that they can rely both on the current guidance at CA11520, as well as the Brief 66/08. Taxpayers are having their cake and eating it.

But what now?

We understand that the overdue update to the guidance is now imminent and having taken further legal advice, HMRCs view will be along the following lines:

- Cluster flats within student accommodation blocks will be treated as dwelling houses in their entirety. Only the main 'common areas' such as entrance halls, staircases, lifts etc will be accepted as falling outside of this definition.
- Houses in multiple occupation will be treated as a single dwelling house.

The following is an indication of the value of plant and machinery inherent in the cost of constructing a typical university-type student block (excluding the FF&E expenditure):

Current guidance (disregarding R&C 66/08) This is how much providers can currently claim.	27% to 35%
Based on R&C 66/08 This is how much providers would have been able to claim, if the guidance on R&C 66/08 had been formally implemented.	10% to 20%
Post New Guidance	4% to 7%

It can be seen that the need to close the temporary HMO loophole will result in providers of bona fide student accommodation losing out in a drastic way, considerably beyond what was set out in Brief 66/08.

The amount that owners of HMOs can claim depends on the configuration of the property; the exact extent of 'common parts' and what plant and machinery is specifically provided in those parts. For example, if the bedrooms all have en-suites, then the scope is significantly lower than if the bathrooms are shared. On a purpose-built HMO, we would expect the plant and machinery element of the construction cost to be anything from 5% to 20%.

Where the HMO is converted out of an existing house, the value of the plant and machinery will of course depend on the nature of the actual works carried out.

The upshot is that the definition of dwelling house for the purpose of Section 35 CAA 2001 will now depend not on the Rent Act 1977, nor its everyday dictionary meaning, but on the date the expenditure was incurred!

What actions should you take now?

Consultation

Davis Langdon is among a group of advisers consulting with HMRC on this issue and we would welcome your views. If you provide either student accommodation or HMO accommodation, or act as adviser to persons that do, could you please take a little time to complete the questionnaire found by clicking on [this link](#). We need to respond by 24th September at the latest, so your urgent action would be appreciated.

Claiming the tax relief

If you are a provider of student accommodation, there is no real need for immediate action, as HMRC did advise that the guidance at CA11520 could be relied on until it is formally updated.

If you are an owner of HMO property, then the action you need to take depends on when you incurred your expenditure:



- If this was before 29 December 2008 you must take immediate action to include your claim for plant and machinery capital allowances in a tax return. Because the new guidance is likely to be retrospective, your tax return will need to be filed before the guidance is published.
- If it was after 29 December 2008, then you can claim your plant and machinery allowances in the normal self assessment time frame. Any expenditure incurred on a house in multiple occupancy after the publication of the new guidance will not qualify, so if you are in the process of purchasing HMO property, you may want to give your solicitor a little gee up.



For further advice concerning any of the issues raised above, or if you require any assistance in preparing plant and machinery valuations on your property expenditure please contact Satnam Kainth at satnam.kainth@davislangdon.com, or alternatively one of our other contacts shown overleaf. Information on other property tax related topics can also be found on our website at: <http://bankingtaxfinance.davislangdon.com>.

