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**HART SHAW**

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[www.hartshaw.co.uk](http://www.hartshaw.co.uk)  
[www.hartshaw-bri.co.uk](http://www.hartshaw-bri.co.uk)**Capital allowances and  
commercial property**

## Are you buying a commercial property for use in your business or for letting to businesses?

If so, please talk to us before you sign the deal as certain aspects of the tax law changed in April 2014. Failure to raise some matters with the vendor until after the purchase may mean that far less capital allowances are available.

### What opportunities are there for claiming plant capital allowances?

If you buy a freehold or leasehold interest in a commercial building, plant capital allowances may be due to the extent that part of the purchase price can be ascribed to fixtures. This is in addition to any plant capital allowances which may be due on moveable items of furniture which are not classed as fixtures. A fixture is an asset which is installed in a building so that it becomes part of that building or land in law, for example a central heating system.

Other examples of fixtures include:

- Hot and cold water systems
- Electrical systems
- Sanitary ware
- Air conditioning.

Not all fixtures qualify for plant capital allowances. In April 2008 a list of 'integral features' was inserted into legislation which clarified which fixtures would qualify for capital allowances and, for some fixtures, extended the ability to claim capital allowances. For example, general lighting would not have qualified as plant prior to April 2008.

Where a building containing fixtures is purchased, the normal rules provide that a 'just and reasonable' apportionment should be made in order to determine the part of the purchase price of a property attributable to fixtures. This apportionment may result in a significant proportion of the purchase being tax deductible through the capital allowances system. In the past, this may not have been considered until after the building had been purchased.

There are anti-avoidance provisions which may limit the allowances to a lower figure. The basic aim of these provisions is to ensure that allowances given to the historical and current owners of the property do

not exceed the original cost of these fixtures when they were first installed in the building.

HMRC believed that the anti-avoidance provisions had not necessarily achieved their aims and therefore introduced new measures some of which came into effect in April 2012 and the remainder came into effect in April 2014.

The measures can result in a purchaser not being entitled to any capital allowances on fixtures if certain conditions are not satisfied.

### **The 2012 measures**

Where the previous owner has claimed capital allowances on the fixtures, the purchaser needs to ensure that a transfer value is formally determined. In the vast majority of cases this will be achieved by a joint election (called a s198 election) between the vendor and the purchaser.

A s198 election can be made within two years of the acquisition of the property. A purchaser may think this provides plenty of time but what needs to be clarified with the vendor includes:

- identification of what fixtures which have been the subject of a claim to capital allowances in the past; and
- agreement as to an appropriate value to include in a s198 election.

It is therefore essential to obtain from the vendor details of the fixtures which have been the subject of a claim to capital allowances. Negotiating with the vendor before the purchase may often be better than trying to obtain the co-operation of the vendor after the purchase.

### **The 2014 measures**

Under the 2014 measures, where a building containing fixtures is purchased, the purchaser can only obtain capital allowances on a fixture if either:

- the vendor was not entitled to claim capital allowances on the fixture. This may be because the property was owned before the introduction of integral features in April 2008 which extended the type of fixtures qualifying for capital allowances;
- the vendor has claimed capital allowances on the fixture when it owned the property (known as the 'pooling' requirement).

In the first scenario, the purchaser would normally be able to claim allowances based on a 'just and reasonable' value of the fixture.

The fundamental change relates to the latter scenario. Prior to April 2014, the purchaser could have claimed allowances on a 'just and reasonable' basis. From April 2014 the purchaser needs to ensure that the non-claiming of allowances is rectified by the vendor. The relevant assets will then come within the procedures for a s198 election.

The central message, we hope, is clear. Let us help you before the purchase of the property rather than attempting to extract information and elections from the vendor many months after the purchase.

# Example of the effect of the 2014 measures

## Pre April 2014 transaction

David is buying a pub from Charles in December 2013. David has obtained information from Charles regarding the fixtures in the pub as follows:

Category A – fixtures on which allowances have been claimed:

cost    £60,000  
'just and reasonable' value    £40,000

Category B – fixtures on which allowances have not been claimed but could have been claimed by Charles (e.g. electrical equipment installed to enable plant and machinery to function):

cost    not known  
'just and reasonable' value    £30,000

Category C – fixtures on which Charles was not entitled to claim allowances (e.g. general lighting installed before April 2008):

cost    not known  
'just and reasonable' value    £25,000

A s198 elected value needs to be negotiated but only on Category A fixtures. David considers the 'just and reasonable' value as being an appropriate value for Category A fixtures.

After negotiation, they agree a value for Category A items of £20,000.

David will be able to claim on Category A, £20,000, Category B, £30,000 and Category C, £25,000.

## April 2014 and later transaction

If the purchase of the pub had taken place in May 2014, Charles will need to claim capital allowances on the Category B fixtures. This will mean finding out the original cost of these items. Say these come to £18,000. David and Charles will need to negotiate a s198 value on these fixtures. The maximum value that can be agreed is £18,000 (i.e. the original cost of the fixtures).