

What is a purchase price apportionment?

When a building is purchased there may be an opportunity to undertake an apportionment of the price paid under s.562 Capital Allowances Act 2001 in order to claim allowances on its fixed plant & machinery content.

Up until 2014 there were few restrictions and it was commonplace to make claims on the purchase of many second-hand buildings where allowances had not previously been claimed. A change to the legislation then restricted claims to the first taxpaying ownership (see below).

There are, however, recurring situations where existing owners have failed to make any claims and in such circumstances, when the building is sold on, the legal entitlement will be lost unless steps are taken to secure it within the purchase agreement. Care is therefore needed when reviewing a vendor's replies to pre-contract enquiries, which may be inaccurate or incomplete. A purchaser may then form a view that there is nothing to be had and fail to complete the diligence which could reap substantial benefits.

First taxpaying ownership

The prime case for a purchase claim is when an asset comes into its first taxpaying ownership. In simple terms, when an investor buys a new building from a developer he or she will be able to apportion the price and make a claim for plant & machinery allowances. The value is significant and for example in a new office building 20% or more of the price might become Capital Allowances.

Another opportunity to claim can occur when the vendor of an existing building is a non-taxpayer e.g. a public body, a charity, or a pension fund. In

such a situation a taxpaying purchaser buying the asset becomes the first owner in the charge to tax and is accordingly entitled to make a claim.

Why might a vendor not have claimed?

It may seem unfathomable why an owner would not have claimed tax relief when they purchased or improved their building, but there are common reasons.

No profits to be offset

If they are not making profits at the time of their expenditure and do not foresee tax liabilities arising for sometime, they may put off preparing a claim (also known as "pooling allowances"). Over time the idea is subsequently forgotten.

Delayed claims time-out

It is also often wrongly thought that delay will mean the ability to make a claim is lost. Capital Allowances are not covered by the statute of limitations and so expenditures even from ten years ago can be revisited. In such scenarios, the belatedly claimed allowances are entered into currently open tax computations.

New office purchase in 2018	
Total Price	£7,166,250
P&M Claim	25.4%
Total allowances	£1,820,228
Tax saved over time	£345,843
Initial yield increase	0.4%

I don't think I qualify - or do I?

There are some investors who incorrectly assume that the system does not apply to them - offshore investors can often take this view. They are, however, ignoring their payment of withholding tax on income exported from the UK - against which allowances can be applied.

Claims on existing buildings post-acquisition

There is no possibility of a vendor completing a late claim for Capital Allowances in the time available before an exchange of contracts. Plainly once a transaction has completed the vendor will no longer have any motivation to be helpful.

It is therefore, essential to insert clauses into the contract of sale which require the vendor's assistance to do the following:-

- Provide information on their expenditures
- The purchaser can then prepare the claim for the vendor to submit to their inspector of taxes
- Both parties can then execute an election under s.198/9 Capital Allowances Act to transfer the unused reliefs to the new owner.

In general vendors seem accepting of such requirements as part of the process of keeping a deal on track. Occasionally, a seller may take the view that they are giving away too much and want to haggle over retaining a portion of the allowances.

Integral Features claims

Another opportunity is the purchase of a building from a vendor who acquired it before 2008.

Capital Allowances were expanded in 2008 to include electrical and cold water systems - thus expenditure before that time did not qualify.

A purchase can therefore mean an opportunity to claim those items as a purchase price apportionment. A typical level of such a claim is around 5% of the purchase figure. Inevitably, this will only be viable on larger purchases. The current £1m Annual Investment Allowance can make such claims more viable if the entire sum of allowance is claimed in the year of the purchase.

The opportunity to make an Integral Features claim is therefore time-based. If a vendor who owned a building before 2008 says they have claimed all allowances and are providing a s.198 election it becomes important to see what items are listed.

Giving good advice to clients

A purchaser will rely heavily on the guidance of their professional team, and may not have a clear understanding Capital Allowances.

It is therefore essential that care is taken to consider whether the sales information, or the answers provided to pre-contract enquiries do convey the indication of an opportunity. Poor or little information from a vendor should be

challenged - it may well reflect their lack of knowledge of allowances.

Purchase claim examples

The table on the previous page illustrates a newly completed office scheme purchased from a developer in 2018. The building had a very good specification including air-conditioning. The outcome was a claim of over 25% of the price paid (including SDLT) qualifying for plant & machinery allowances.

As can be seen this produced significant tax savings over time and also has an impact on the investment yield thus improving the return on capital employed.

The second example, on this page, is of a Grade II listed office building purchased in 2016 where the vendor was obliged to assist in claim preparation and submission to HMRC.

Purchase claim older office building	
Total Price	£1,030,000
P&M Claim	16%
Total allowances	£165,308
Tax saved over time	£31,409

Contract clauses

Where required, we can provide draft clauses for inclusion in a purchase agreement that ensure the vendor is committed to assist in the preparation and submission of the claim for allowances.

About us

The new corporate identity rebranding to Afilia in 2018 has been good for our profile and already shown an increased level of enquiries and new business opportunities. As always, preliminary advice and guidance is provided at no cost.

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