

HMRC Consultation Document – Capital Allowances for fixtures

HM Revenue & Customs (HMRC) published a [consultation document](#) on 31 May 2011 which proposes amending the current rules on claims for capital allowances in respect of fixtures. Further detail on each of the proposals and the implications for businesses and property investors are set out below:

Proposal 1 – Mandatory Pooling

Proposal

- Businesses must pool their expenditure on fixtures within a reasonably short period of time after acquisition, in order to qualify for capital allowances.
- The proposed time limit is between one and two years from the date of acquisition.
- This proposal relates to expenditure on fixtures after the introduction of new legislation with the additional suggestion of a longstop date being placed on pooling expenditure on fixtures incurred before the introduction of new legislation.
- Notification would be via the tax return.

HMRC's rationale

- Prevention of 'double claims', where it is not possible to establish the disposal value brought into account by the vendor or any restrictions from prior owners.
- To give businesses 'clearer and fairer' rules without significantly adding to the administrative burden.
- To ensure there is no tax loss for the Exchequer and the policy intent (no double claiming of allowances) is upheld.

Potential Issues

- This proposal restricts the freedom of businesses to quantify capital allowances on fixtures at a time that suits their needs, from an administrative, resource and availability for use perspective.
- The consultation document does not make it clear whether these proposals also relate to fixtures 'acquired' on the construction of a building. However, it is likely that the intention is for these proposals to apply to all fixtures, including those affixed to properties by the current owner.
- The proposals could create an additional administrative burden on loss-making businesses which will have to choose whether to use resources to quantify allowances that they may not be able to use in the near future or lose entitlement to these allowances at some point in the future.
- Businesses that do not retain specialist advisers or have an experienced in-house tax team may be badly affected by these proposals if they do not fully understand the new rules. Under the current rules, this can be resolved at a later date.

- There is already a process set out in the legislation that, when applied correctly, deals with the risk of 'double claims'.
- The consultation suggests that the deadline for pooling expenditure on fixtures is linked to the date of acquisition, but that notification will be via the tax return. It is not clear how the deadline would therefore be enforced.

Actions

- Businesses may wish to consider carrying out a review of expenditure on fixtures to date, to prepare to pool if a longstop date is introduced. Such a review should include fixtures purchased as part of construction/fit out projects, as well as those acquired with an existing property.
- Businesses should consider the impact of these proposals on their own operations and formally submit their views to HMRC in line with the consultation process.

Proposal 2 – Mandatory record of agreement of value of fixtures

Proposal

- For all property transactions involving the transfer of fixtures, the vendor and purchaser would need to jointly agree the market value for the fixtures.
- This would need to be agreed within the same time limit as for Proposal 1, above.
- Notification would be through the submission of a joint note of mutual agreement with the tax returns.
- The format could be similar to that currently used for elections under Section 198 Capital Allowances Act 2001 ("s198 elections").

HMRC's rationale

- The presence of records would help both purchasers and HMRC track the tax history of a fixture, especially where the last owner is not chargeable to tax.
- This will help the purchaser pool its expenditure within the time limits in Proposal 1, above, as well as helping both parties agree on a value for the disposal/purchase.

Potential Issues

- Although this notice would be a pre-condition for a purchaser of a property to claim capital allowances on the fixtures therein, it is not clear what would be the implications of a notice not being made in the timeframe in relation to future purchasers' rights to claim allowances on the fixtures in question (i.e. whether the failure of a notice to be agreed at one point in a chain of sales would result in all future purchasers losing entitlement to claim allowances).
- If the right to claim allowances were to be lost, this would place full negotiating power with the vendor, affecting normal commercial negotiations.
- It is not clear whether the notice would need to be at market value or at a value agreed by the parties, so it is unclear how this proposal differs from making s198 elections mandatory.

- It the notice is to be at market value, there is currently no indication of how this would be calculated, although it is likely the existing 'just and reasonable apportionment' basis would be used, given the general lack of a second hand market for these assets on an individual basis.
- The consultation document does not address what would happen if the market value were above original cost. If the restriction to original cost were to remain, we would expect to see this appearing on the notice.
- There is no clarification on whether a notice would be required for all fixtures or only those on which a claim had been made.
- It is unclear what the mechanism would be if one party is not a tax payer, given that the joint notice is made via tax returns.

Actions

- As for Proposal 1 above, businesses should consider the impact of these proposals on their own operations and formally submit their views to HMRC in line with the consultation process.

Proposal 3 – Limits on the value included in s198 elections and/or tightening of anti-avoidance provisions in s197

Proposal

- A restriction on the value that can be included in s198 and s199 elections to a minimum of tax written down value.
- Tightening of the wording in s197 so that the anti-avoidance provisions would be triggered where the crystallisation of a balancing allowance was one of the main purposes of the transaction.

HMRC's rationale

- Restriction of s198 values would mean that the allowances would sit with the person who is using the fixture in his business, rather than current situation where £1 elections mean that the person with the benefit of the allowances no longer owns the asset.
- Tightening the wording in s197 would ensure that allowances could not be accelerated and obtained whilst the fixture was still being used for the purposes of someone's business.

Potential issues

- In the past, HMRC has indicated that where s198 elections are entered into, they are 'relaxed' on how the parties split the capital allowances in relation to the fixtures being transferred. Based on this understanding, it is clear that parties have agreed s198 elections based on normal commercial principles and the process has worked well.
- There may be situations where non-tax paying entities would hold entitlement to capital allowances where they have no means to make use of them and are happy for the counterparty to keep them.

- Capital allowances are an important part of the negotiation process in property transactions, especially where a non-tax payer is involved. This proposal would impact on this part of the commercial process.
- Although, in some cases, a balancing allowance is crystallised, this should only be a timing difference, and the total amount of allowances given on an individual fixture should be the same over the life of the asset.
- Transactions specifically for the acceleration of allowances are already caught by the anti-avoidance legislation as currently drafted.

Actions

- As for Proposals 1 and 2 above, businesses should consider the impact of these proposals on their own operations and formally submit their views to HMRC in line with the consultation process.

KPMG in the UK has a significant Capital Allowances advisory practice and also has extensive experience in advising property owners and occupiers on how to optimise tax relief to keep cash in the business. We would be happy to discuss these proposals with any interested parties.

Contact

David Woodward

+44 20 76944171

David.Woodward@KPMG.co.uk

Harinder Soor

+44 20 73112729

Harinder.Soor@KPMG.co.uk

www.kpmg.co.uk

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