

Elective surgery

Alun Oliver responds to a frequent query on the procedures to comply with the new fixtures rules.

Here is an interesting situation: I am a tax adviser to the former owners of a small hotel following a retirement sale to a new team who are refurbishing the hotel to give it a new lease of life. The purchaser's tax advisers have asked that we sign off a 'pooling letter' and an election under CAA 2001, s 198. We had claimed capital allowances for the sellers, but only for the loose furniture – such as tables, chairs, wardrobes and beds – nothing was claimed against the building fabric or things such as heating, kitchen or fire alarm system. The sale agreement referenced an agreed figure for chattels, land and building, stock and goodwill and so I feel their proposals are rather complicated and unnecessary?

Answer

We see an awful lot of confusion around these aspects and generally little awareness of the new fixtures rules legislation in capital allowances – both from solicitors acting on transactions and the tax advisers to the relevant parties. But the process has been mandatory since April 2014 and is much more onerous than before. It is very likely that the course of action that has been outlined above is correct, but we have seen it can lead to exchanges of lengthy emails explaining the complex rules and requirements that HMRC and the Treasury devised. It is important that the necessary contractual obligations are achieved or that the parties at least agree to cooperate – otherwise the purchaser may lose the right to any tax relief from their otherwise eligible purchase expenditure.

Finance Act 2012, Sch 10

The backdrop of these requirements is FA 2012 which in Sch 10 introduced the new fixtures rules under CAA 2001, s 187A and

Key points

- There is still little awareness of the new fixtures rules legislation in capital allowances which have applied fully since 2014.
- A new owner's ability to enjoy any tax relief arising from the capital allowances fixtures is dependent on the past owner's position and actions.
- A CAA 2001, s 198 (or s 199) election allows the parties to a transaction to agree and fix the portion of the sale/purchase price that is apportioned to the tax fixtures.
- The pooling requirement captures the historic expenditure by the vendor into the tax computation so that HMRC has visibility of the relevant figures.



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s 187B and set out these 'new' requirements for pooling, fixed value and disposal value statements.

A new owner's ability to enjoy any tax relief arising from the capital allowances fixtures is – since April 2014 – entirely dependent on the past owner's position and actions. If a purchaser fails to comply with these legislative steps (not satisfying each requirement – pooling, fixed value and/or the disposal value statement – where it applies), this would deem any expenditure potentially qualifying for capital allowances to be treated as nil (s 187A(3)), stripping away any tax relief that might otherwise have been available. These complex aspects of tax legislation could readily generate a great deal of narrative, far more than we can hope to cover here, so I will focus on the principal issues – the pooling and fixed value requirements.

HMRC had formulated these complex rules to address perceived abuse of inflationary capital allowances claims, regenerative claims or simply fraudulent claims submitted by some with little interest in proper compliance processes or doing basic due diligence. A clear example of these previous poor practices is the case of *Bowerswood House Retirement Home Ltd* (TC4299) where the consultant's skewed valuations sought to create the highest possible claim – rather than the legislative requirement (CAA 2001, s 562), the long established 'just and reasonable' apportionment of the purchase price to achieve a fair and consistent valuation.

Fixed value requirement (s 198/s 199 election)

To counter the upward inflationary pressure on purchase claims (in a rising property market the just and reasonable apportionment rises in proportion with market inflation – increasing the potential allowances and thus tax savings) this requirement sought to cap the claim's possible value at that of the first eligible owner's expenditure, thus 'pinning' the maximum claim value to a specific point in time. So, a UK taxpaying vendor, would typically be expected to have claimed the capital allowances to which it was entitled. Had a full claim been made, a s 198 election (or s 199 if leasehold) allows the parties to a transaction to agree and fix the portion of the

sale/purchase price that is apportioned to the tax fixtures – plant and machinery allowances (PMAs) and integral features allowances (IFAs) – using a figure between the full claim value, tax written down value or down to £1 in each pool as the balancing charge to the prior claim – meeting the fixed value requirement.

Pooling requirement

The reality we regularly observe is far more nuanced with a great many businesses (as the vendor in this question) not fully claiming all (or any) of the capital allowances they are entitled to. In these circumstances, the notional claim that could have been made, had they made a purchase claim, is the ‘just and reasonable apportionment’ of their purchase price and forms the base line that needs to be assessed and then used via the s 198 election and set out in any ‘pooling letter’.

This pooling requirement captures the historic expenditure by the vendor into the tax computation so that HMRC has visibility of the relevant figures. Pooling is the process whereby the vendor inserts the requisite notional claim figures into their tax computation pools, together with corresponding negative figures – this in and out results in a net nil – and thus has no additional tax impact on the vendor. In most situations the pooled figure is assessed by the purchaser’s capital allowances specialists albeit based on the lower of their own purchaser or the vendor’s historic purchase. Alongside this, the s 198 election document is used to attribute the values into PMAs or IFAs, as may be applicable, depending on the vendor’s prior purchase being before or after April 2008 and any more recent expenditure being applicable.

We are advised in this situation the vendor had not claimed (other than chattels) and thus a ‘notional claim’ should be assessed and reported to HMRC via the respective main or special rate pools and s 198 election to set out the eligible costs that the purchaser may then be able to claim, in respect of their acquisition costs.

While the process is rather bureaucratic, it is the current and required legislation and thus important for advisers to properly operate if buyers are to retain any benefit of capital allowances on their purchase transactions. Further guidance can be found in HMRC’s *Capital Allowances Manual* at CA23210 (PMA: WDA and balancing adjustments: Pooling) and CA26476 (PMA: Fixtures: Changes in ownership: Pooling requirement). ●

Author details

Alun Oliver FRICS is managing director of property taxation specialists, E³ Consulting. He is a regular speaker and author on property tax matters, a CEDR accredited mediator and recently joined the CIOT’s property tax committee. He can be contacted by email: alun.oliver@e3consulting.co.uk and tel: 0345 230 6450.



FIND OUT MORE
On [Taxation.co.uk](https://www.taxation.co.uk)

- CAA 2001, s 198 election on tenant’s fixtures: tinyurl.com/254nnazf
- CAs on property transactions: tinyurl.com/2s46nct7

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