

Capital allowances – not to be ignored

Until recently, because charities do not generally pay income or corporation tax, they often thought that they did not need to consider capital allowances on fixtures in a building they bought or sold.

Changes in the capital allowances regime mean, however, that this is no longer the case. By ignoring them, a future taxpaying buyer will be unable to claim allowances, and will possibly look to chip a sale price as compensation for any loss they have, or perceive they have, lost as a result.

Capital allowances are the mechanism by which the tax system gives tax deductions for the depreciation in value of a company's capital assets. Because they reduce the annual tax bill of a business, and therefore the tax paid to HMRC, they are valuable and worth cash.

Capital allowances can be claimed on the value of fixtures in a building that is bought as well as on the cost of installing fixtures in a building. They cannot be claimed on the value of the building itself.

In general the cost of a fixture is claimed as a tax deduction over a period of time. If the building is sold, the allowances can be passed between the parties as they wish, subject to allocation of the price to fixtures never exceeding original cost. This has led to concern at HMRC that a lack of records and passing property through non-taxpaying entities such as charities has resulted in more allowances being claimed than are due. New rules on reporting and claiming allowances have and are being introduced to give certainty to HMRC. If the rules are not met, no allowances will be available to a buyer.

What this means for charities is that they need to obtain information when buying property that would not have been and remain unimportant to them, but will be important to a future purchaser. Without this information, in some cases justifiably, a future buyer may say this will increase the cost of the property for them and result in them looking to reduce the price they pay.

To qualify for allowances a seller and purchaser must agree the transfer value of fixtures. Without this a purchaser cannot claim allowances. This should be done by way of "section 198" capital allowance election on the purchase of the property. While as a non-taxpayer charities won't be able to enter into an election on a sale, they will have the information to satisfy a buyer and to enable that buyer to claim allowances.

If on a purchase a charity is entering into an election which allows a seller to retain the benefit of all future allowances, consideration should be given to asking for a lower purchase price to share the benefit of the allowances and to compensate for any future lower price a buyer may offer as the allowances will not be available.

For further information, please contact:

Jane Innes
Consultant
+44 (0)20 8394 6450
Jane.Innes@russell-cooke.co.uk

Kate Slattery
Associate solicitor
+44 (0)20 8394 6458
Kate.Slattery@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP. © Russell-Cooke LLP. June 2014