



## Capital Allowances for Commercial Property from April 1<sup>st</sup> 2014

From April 1<sup>st</sup> 2014 the Capital Allowances Legislation was significantly amended in respect of transactions involving the purchase or leasing of commercial property. These changes represent a significant risk to solicitors because of the amount of tax relief which may be at stake.

### Background

- Capital Allowances provide tax relief for those who invest in Commercial Property. Their application is controlled by legislation.
- Plant and Machinery (P&M) capital allowances are available for expenditure incurred on certain types of fixtures in commercial property e.g. heating and electrical systems.
- The value of these fixtures can represent a high proportion of the purchase value of the property and this value is what may produce significant tax relief for the buyer.
- The way in which these allowances are transferred changed from April 2014 and this represents a risk for both solicitors and their clients.
- From April 2014, the availability of these allowances to the buyer will depend completely on the actions of the seller.

For transactions from 1<sup>st</sup> April 2014, if a seller, who was entitled to claim capital allowances, has not claimed, the buyer gets absolutely nothing.

### Why should solicitors be concerned?

- Solicitors are required to make pre-contract enquiries of the seller as part of their due diligence process. These enquiries cover the potential capital allowances position on transfer.
- Historically the interpretation of these enquiries has not always been a priority because retrospective claims could be undertaken after completion.
- However from April 2014 the interpretation of these enquiries and giving the correct advice to clients becomes critical.
- Unless a solicitor, acting for the buyer, specifically limits their liability in respect of capital allowances advice, they run the risk of a potential negligence claim because of a lack of duty of care.
- Therefore it is essential that solicitors take the necessary steps to mitigate this additional risk to avoid the possibility of legal action being taken against them.

### Stage 1 - Due Diligence - establishing the seller's capital allowances position.

- The buyer's solicitor engages CPA to provide advice on the capital allowances aspects of the transaction. Fees are on a fixed scale as a regular disbursement of the conveyance process.
- CPA takes responsibility for designing capital allowances contract enquiries to be sent from solicitor to seller's solicitor.
- CPA then analyse the seller's responses and make further enquiries of the seller via the solicitor if required.
- CPA then produce a report for the solicitor detailing the capital allowances position of the seller and making a list of recommendations which will protect the buyer's entitlement to claim potential capital allowances.

### Stage 2 - Contract Negotiations

- If the seller wishes they may contract directly with CPA on a separate fee agreement to implement the recommendations within the capital allowances report.
- CPA negotiates directly with the seller or their professional representative to implement the recommendations in the capital allowances report.

### Stage 3 – Capital Allowances Valuation

- If a formal capital allowances valuation is required on behalf of the seller to enable the capital allowances benefit to be passed to the buyer then CPA can provide this through a separate fee based arrangement with the buyer.

### The Benefits

- The risk of providing capital allowances advice to buyer's is transferred to CPA.
- Solicitors will not face the possibility of claims of negligence being made against them in commercial property transactions.
- Buyers will benefit from capital allowances which are passed from the seller to the buyer.
- Solicitors can provide a clear added value service for their clients over and above what historically might have been the case.

If you would like further information on our Capital Allowances Services for Solicitors please e-mail [info@curtisplumstone.com](mailto:info@curtisplumstone.com) or call 02392 696815 and ask to speak with John Plumridge or Nick Johnson.