

ClientAlert

Tax

May 2014

Fixtures Allowances in Commercial Property Transactions: Pooling and Fixed Value Requirements



New rules concerning capital allowances on the disposal of fixtures (first announced in 2011) are now in full force. The changes, which are procedural and impose additional formalities, are:

- Mandatory pooling (which came into effect in April 2014); and
- The fixed value requirement (“**FVR**”) (which came into effect in April 2012).

Nevertheless, the old rules continue to apply.

The basic aim is to limit plant and machinery allowances on fixtures (“**PMA**s”) to the original cost incurred and to prevent double claims on expenditure on the same fixture. In particular, the problems with the old system were that:

- The parties did not necessarily agree a single disposal/acquisition value; and
- Late pooling by the buyer made it difficult to track information on a previous owner’s claims.

Where the requirements apply, for PMA purposes a buyer of second-hand fixtures will be treated as having qualifying expenditure of nil (and will therefore be unable to claim PMA’s on the relevant fixtures in future) unless both requirements (if applicable) are satisfied.

The rules operate by reference to a “past owner” which is usually – but not necessarily – the seller. Simply, the “past owner” is the most recent person (before the buyer) who has been entitled to claim PMA’s (e.g. the previous seller).

Pooling requirement

Broadly, if the seller was entitled to claim PMA’s, then to satisfy the pooling requirement the seller must have “pooled” its expenditure on fixtures in a chargeable period beginning before sale. In practice, this is understood to be achieved by including the expenditure in the “past owner’s” tax return. It is not clear whether an election under section 198 CAA also constitutes pooling, although HMRC guidance suggests it does. There is no need for the seller to actually claim (or have claimed) the PMA’s.

Where the seller is a tax exempt body (e.g. a pension fund or charity) the buyer will not be able to claim PMA’s unless the most recent owner who was entitled to claim allowances (the “past owner”) pooled their PMA expenditure. It is therefore important for non-taxpayers to obtain the requisite information about PMA’s on a property purchase even though they themselves cannot claim the PMA’s. If they fail to do so, the PMA’s won’t be available to subsequent buyers, thereby potentially reducing a property’s value.

Peita Menon
Partner, London
+ 44 20 7532 2107
pmenon@whitecase.com

Prabhu Narasimhan
Counsel, London
+ 44 20 7532 2174
pnarasimhan@whitecase.com

White & Case LLP
5 Old Broad Street
London EC2N 1DW
+ 44 0 20 7532 1000

A buyer should consider contractual protection (such as a warranty/undertaking from the seller) that the seller has or will have pooled the fixtures by the end of the relevant chargeable period (or that, in the case of tax exempt sellers, they will provide details of the PMA expenditure pooled by the “past owner”).

Fixed value requirement

The FVR applies where the “past owner” (1) was entitled to claim PMAs and (2) has claimed PMAs.

The FVR requires the parties to attribute a value to the fixtures being transferred. This is achieved in the vast majority of cases by the seller and buyer making a “section 198 election” within two years of sale to fix the apportionment of the sale price relating to the fixture. Where the seller and the buyer are unable to agree an apportionment, either party may apply within two years of sale to the First Tier Tribunal to determine the value of the fixture. The FVR will be satisfied when the tribunal determines the value.

There are special rules that allow PMAs to be preserved if an intervening owner (the seller) such as a pension fund or charity is not entitled to claim PMAs (such that the “past owner” in this case is not the seller but rather a previous owner, who was entitled to claim PMAs). The rules require the “past owner” and the pension fund/charity to enter into a valid “section 198 election” (or apply to the tribunal to determine the value). When the pension fund/charity sells the property the “section 198 election”/tribunal determination may then be passed to the buyer, thus satisfying the FVR.

However, it may be that the seller in this case (i.e. the intervening tax exempt owner) has not made a joint election with the “past owner”; or that the two years has elapsed. To avoid allowances being lost in these circumstances, the buyer is able to satisfy the FVR if he obtains:

- a written statement from the seller stating that an election was not made and can no longer be made; and
- a written statement made by the “past owner” showing the disposal value brought into account.

whitecase.com

This Client Alert is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This Client Alert should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the White & Case website.

White & Case has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This Client Alert is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit.