The Property Agent and Capital Allowances

HELEN COOPER
CAPITAL ALLOWANCES

The property agent is the first consultant to be contacted by a property investor in respect of their property transactions. The agent therefore is best placed to kick start the capital allowances due diligence and negotiation process now required for each transaction. This process will ensure that their client optimises any tax saving available from capital allowances.

Why should property agents be concerned about capital allowances?

Normally, the main focus of the property agent is to obtain the best price for the client, whilst completing the transaction with the least delays as possible.

Due to the complexity of capital allowances, many agents are of the view that transactional capital allowances issues should be dealt with by the clients' solicitor or accountant. Very often however solicitors and accountants do not have specific property capital allowances knowledge and purchase contracts remain silent in relation to capital allowances or contain default CAA 2001 s198 election for £1, which may be completely inappropriate for the given circumstance.

Following the introduction of the new fixtures legislation, and in particular mandatory pooling effective from April 2014, a capital allowances due diligence exercise should be carried out at the earliest opportunity, before heads of terms are agreed. If not, valuable tax savings may be lost. As clients solicitors and accountants aren't normally bought into the transaction process until after heads of terms have been agreed, it is essential therefore that property agents take a proactive stance in respect of capital allowances.

What is mandatory pooling?

Following the introduction of mandatory pooling in April 2014, If a seller is able to claim capital allowances on fixtures (i.e. a tax payer that holds property as an investment) but does not do so, then the buyer's entitlement to capital allowances on those fixtures will be nil. Prior to April 2014, this scenario most likely would have resulted in an unrestricted claim.

In order for the purchaser to benefit from allowances following purchase, the contract should now include a requirement that the seller makes a claim for capital allowances within a specific time period (i.e. 6 months) and then enters into s198 election with the buyer at the full value of the capital allowances claimed. All allowances will then transfer to the purchaser.

Why carry out a thorough due diligence exercise?

Often the vendor will state that they have claimed all the available capital allowances in the property, requesting then that the purchaser enter into a CAA2001 s198 election for £1. In many instances however there are additional allowances that have been overlooked that could be claimed by the purchaser.

In order for the purchaser to benefit from all capital allowances that are available within the property, a full historical due diligence exercise should be carried out establishing whether any additional opportunities exist.

Once any opportunities have been established specific clauses as mentioned above, should be incorporated into the contract safeguarding the clients' capital allowances.

The following are examples of additional opportunities that may exist for a property.

The Property Agent and Capital Allowances

- Fixtures installed in the property since the sellers initial capital allowances claim.
- Fixtures that were missed from the sellers initial capital allowances claim.
- Fixtures that the seller was unable to claim for due to changes in legislation (i.e. post 2008 integral features, electrical systems, cold water systems).
- Fixtures relating to landlord contributions to tenant fit out works.

Addressing capital allowances at the earliest opportunity - The benefits for property agents

Capital allowances when addressed promptly and in detail, will help to move the deal forward and may increase the ultimate value of the property

- Depending upon the property type, capital allowances of as much as 45% of the purchase price may be available to the purchaser. For example a private property investor purchasing a £1mil high tech office block could expect to achieve a tax saving of £180k. The added value to the buyer can be significant.
- The additional tax benefit resulting from capital allowances can have a dramatic effect on the yield of a property, with improvements by up to 10%.
- Capital allowances can be used as a valuable negotiation tool by both parties to the transaction.
- With the introduction of the new fixtures legislation, solicitors are now more aware that capital allowances should be agreed at transaction stage. Taking a proactive view will hopefully result in fewer delays during the latter more adversarial stage of the transaction.

Whether acting for the purchaser or the vendor, HCCA can provide a full range of transactional advice and expertise to ensure your client optimises any tax saving available from capital allowances.

HCCA works in association with a number of professional service firms and is generally happy to form partnering arrangements where appropriate. We harmonise our roles and services with a view to providing a rounded property taxation service whilst maximising capital allowances opportunities and cash benefits for our respective clients. Whilst many of our current professionals see this service as a relationship enhancement with their clients, HCCA are happy to pay referral fees in respect of any introductions made that lead to valuation fees.

HCCA welcomes the opportunity to give free initial advice ensuring that your clients' tax savings are protected and fully realised and that your deal is not delayed due to capital allowances issues.

For further information on the Property Agents role in relation to capital allowances, or any other matter please contact HCCA.

Helen Cooper
Tel: 07866 311532
Email: hcooper@hccapitalallowances.co.uk