



# Capital Allowance Guidance Notes for Solicitors

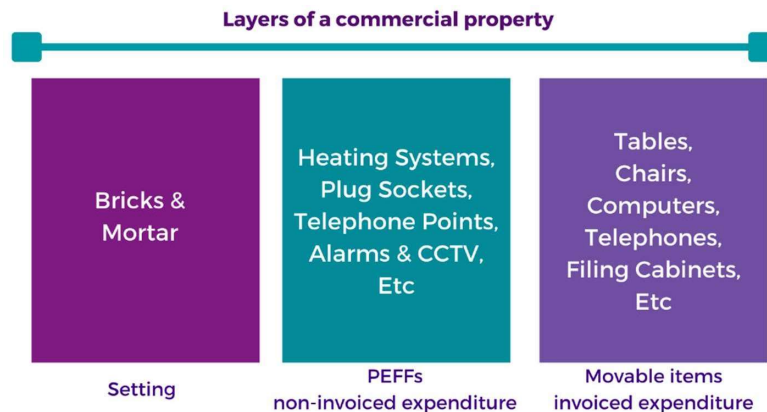
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## Introduction to PEFs

What are PEF's?



Many businesses are missing out on millions of pounds of tax allowances and your clients could be among them. It's estimated that the majority of owners of commercial properties haven't claimed because the dormant tax benefit in embedded fixtures is often overlooked.

Changes in the Finance Act from April 2014 mean that tax allowances for commercial building fixtures could be lost to a new buyer and all future owners.

You may not have heard about this property relief because it requires a specialist surveyor and tax expert to review your buildings and books.

When a property changes hands there was previously no requirement for sellers and buyers to agree on a single disposal/acquisition value for "[Property Embedded Fixtures and Fittings](#)" (PEFFs) within the overall sales price.

There was no time limit on when, if ever, PEFs are added to the capital allowance pool, however, all this changed.

It is important to understand how these changes have affected entitlement to capital allowances for PEFs.

The scenarios below highlight where legislation does and does not apply:

**1.) No property transaction**

The owner simply claiming allowances, the legislation changes do not apply, and no time limit restriction.

**2.) Property transaction took place between 2012-2014**

Transitional Period 'Fixed Value Requirement' may apply if the seller has claimed, with a time limit of 2 years. If the seller did not claim previously then the legislation changes did not apply.

**3.) Property transaction from April 2014 onwards**

The legislation changes may apply meaning the mandatory pooling and fixed value requirement within the 2-year time limit.

**Please note** - this is a simplified summary. It is strongly recommended that each transaction is reviewed in isolation to ensure complex legislation is applied accordingly. For example, there may not be a 2-year time restriction for transactions post-April 2014, as the restriction is subject to several factors.

## Legislation Changes

### The first change (from April 2012): The transitional period.

The transitional period for corporation tax was from 1 April 2012 up to and including 31 March 2014; for income tax, it was from 6 April 2012 up to and including 5 April 2014. Where the seller has made a capital allowance claim, the "Fixed Value Requirement" ensures that the seller's disposal value and the buyer's acquisition value are the same. This is achieved by requiring the seller and buyer to enter into a joint Section 198 or Section 199 Capital Allowances Act 2001 election within two years of the transfer of the property.

If a figure cannot be jointly agreed upon, either party may make a unilateral appeal to the First Tier Tax Tribunal for an independent determination.

### The second change (from April 2014).

After April 2014, the rules changed again to include a new "Pooling Requirement". For any property bought on or after the commencement date, for the buyer to be able to claim capital allowances, any seller who could have claimed capital allowances must pool (though not necessarily claim) the allowances, which can then be passed to the buyer.

The Pooling Requirement extends to all previous owners and not just the current seller (where the previous owner had sold the property on or after the commencement date).

### What do these changes in legislation mean?

If the 2012 Fixed Value Requirement or the 2014 Pooling Requirements are not met, then the buyer and any future owners will never be able to claim capital allowances on those fixtures.

For the business owner, this means an immediate and irrevocable loss of an important tax benefit and, for some types of commercial property, a reduction in future sales value.

For a professional adviser, the complexity of these legislation changes raises the prospect of their advice being called into question, potentially exposing their professional indemnity insurance.

The message is clear: If your client is contemplating the purchase of commercial property in the coming months then it's essential to get the best advice they can on capital allowances.

If they have been involved in a commercial property transaction within the last two years, we would encourage a review of how the capital allowances have been handled and documented.

### Interesting reference

Matt Sullivan, Head of Business Development, at The Law Society, added: "It's only a matter of months before a seismic shift takes place in the commercial property market, but too few parties have made anywhere near the necessary preparations. Lawyers, especially, need to be fully up-to-speed with their obligations under the new regime, as failure to do so could cost their clients sizeable amounts in lost tax relief.

## CPSE1 Sect 33 (v 4) – Guidance

A deduction from profits can be claimed for certain types of capital expenditure under the Capital Allowances Act 2001 (CAA 2001). The deduction is called a capital allowance. Some expenditure may be written off in full in the year in which it is incurred. Most capital expenditure, however, is written off over a number of years.

The most common capital allowances are those in respect of plant and machinery.

In the context of real estate transactions, plant and machinery included in the property will usually be "fixtures". "Fixture" is defined in section 173 of the CAA 2001 as "plant or machinery that is installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land, and includes any boiler or water-filled radiator in a building as part of a space or water heating system".

On basic capital allowances principles, where a property that includes fixtures is purchased or acquired under a lease for a premium, the amount of the price or premium that can be treated as attributable to the fixtures must be ascertained by a "just and reasonable apportionment" of the price or premium to the fixtures, which is a matter of appropriate valuation.

However:

- certain provisions of the CAA 2001 can operate to restrict the attributable amount or even deny the Buyer capital allowances on Fixtures altogether; and
- it is sometimes possible for the Seller and Buyer to "elect" for a specific amount to be "fixed" as the attributable amount.

The principal purpose of these enquiries is to enable the Buyer to find out if such restrictions or denial of capital allowances might apply, and whether the circumstances permit or require an election, in the case of the specific transaction.

### What does section 33 require?

#### Enquiry 33.1

Do you hold the Property on capital account as an investor/ owner-occupier, or on revenue account as a developer/ property trader as part of your trading stock? Please specify which.

*A yes or no answer is not appropriate. State: Investor, owner-occupier, or stock.*

*If the Seller is holding the Property as a trader as part of trading stock, because, for example, the Seller is a developer or dealer, it will not have been able to claim capital allowances as any expenditure incurred will not have been on capital account.*

*However, the remaining enquiries in section 32 should still be answered as there may be relevant information relating to an earlier owner of the Property.*

#### Enquiry 33.2

Have you claimed capital allowances on plant or machinery fixtures or allocated any expenditure on such fixtures to a capital allowances pool? If so, please answer the supplementary questions in enquiry 33.9 in respect of that expenditure.

*This requires only a yes or no answer, and is in respect of property embedded fixtures only, not moveable plant & machinery e.g. chattels.*

### Enquiry 33.3

If there is any expenditure on plant and machinery fixtures that you have not pooled:

- a) will you do so if the Buyer asks you to?
- b) if so, by when?
- c) if not, why not?

*If the seller could, but does not pool the fixtures, no capital allowances can be claimed by the purchaser or any future owners of the property in respect of those items that could have been pooled by the seller. They will be lost forever.*

### Enquiry 33.4

If you bought the Property and cannot pool any expenditure on plant and machinery fixtures:

- a) please provide the name and contact details of everyone who has owned the Property since April 2014;
- b) please provide evidence that the most recent previous owner who was entitled to claim allowances pooled any expenditure on plant and machinery fixtures? Please answer them supplementary questions in enquiry 32.9 in respect of that previous owner's expenditure.

*Some property owners may be unable to pool the fixtures, for example, they may be non-UK tax payers. If so, the first owner of the property after April 2014 may claim for the unclaimed fixtures then the legislation changes apply from then on.*

### Enquiry 33.5

Please provide details of any plant and machinery fixtures which were paid for by a tenant, including any contributions made by you towards their cost.

*This ensures future owners of the investment property do not claim capital allowances on fixtures installed and paid for by tenants.*

### Enquiry 33.6

Please provide details of any plant and machinery fixtures which are leased to you by an equipment lessor.

*This ensures capital allowances are not claimed for leased fixtures for which title remains with the lessor.*

### Enquiry 33.7

If the transaction is the grant of a new lease at a premium, and you are entitled to do so and the Buyer asks you to, will you enter into a Capital Allowances Act 2001 section 183 election for the Buyer to be treated as the owner of the plant and machinery fixtures for capital allowances purposes?

*The s183 election passes the right to the capital allowances on fixtures embedded within the property from the lessor to the lessee. It must be entered into within 2 years from the grant of lease.*

### Enquiry 33.8

Please provide details of any expenditure on plant and machinery that you have treated as long-life assets, or any expenditure upon which you have claimed another type of capital allowances (for example, industrial buildings allowances, research and development allowances, business premises renovation allowances and so on).

*A list is required of assets which have had tax relief under any other type of capital allowance regime, so that the purchaser can ensure assets are treated accordingly in future, with no duplication of claims.*

### Enquiry 33.9

For each plant and machinery fixture for which a claim has been made or expenditure has been pooled, please:

- a) provide a description of that fixture;
- b) state when that fixture was acquired;
- c) state whether that fixture was installed by you, or already installed by a previous owner (please specify which);
- d) state the amount of expenditure pooled in respect of that fixture; and
- e) (where enquiry 32.2 applies) confirm that you will enter into a Capital Allowances Act 2001 section 198 election in that amount (or other appropriate amount, to be agreed) if asked to do so by the Buyer. OR
- f) (where enquiry 32.4 applies) confirm whether the most recent previous owner who was entitled to claim allowances entered into a Capital Allowances Act 2001 section 198 election and, if so, in what amount.

*This enquiry is only to be answered where expenditure on plant and machinery fixtures has been pooled by the seller (see enquiry 32.2) or a previous owner (see enquiry 32.4).*

### Enquiry 33.10

In relation to capital allowances on structures and buildings (SBAs):

- a) Does the Property qualify for SBAs?
- b) If the answer to (a) is yes, then please state: the total qualifying expenditure for SBAs; the dates when such expenditure was incurred and by whom; the amounts of SBAs that have been claimed to date, by whom and when; the current residue of qualifying expenditure; together with all supporting evidence as required by the relevant legislation; and please provide an "allowance statement" as mentioned in section 270IA Capital Allowances Act 2001.

*Structures & Buildings Allowance (SBA) only applies to property build projects that started after October 2018.*

### Enquiries 33.11

Please provide the name and contact details of your capital allowances adviser. Please confirm that We may make contact with him/her in order to obtain information about the matters dealt with in this enquiry 33.

*It is advisable to include an expert:*

*Capital Allowance Review Service, T: 0330 174 1339, E: [info@capitalallowancereviewservice.com](mailto:info@capitalallowancereviewservice.com)*

## Substantial Tax Savings at Risk

The tax savings that a PEFF or capital allowance expert can uncover are significant. Many of the cases we work on show unclaimed allowances even for businesses that have already received help from professional advisers.

The new pooling requirement enforced in 2014 has created a complexity that means understanding timing and application is crucial. Subject to this new pooling requirement, there is no time limit for retrospective claims, so a claim started today could take into account many years of investment in plant and machinery, generating tax savings on every item that was neglected when past claims were made. This historic entitlement creates a major opportunity for boosting a business's present-day finances, making unclaimed capital allowances a key contributor to a company's resources.

When a commercial property is sold, large amounts of capital allowances change hands, often without either party being aware that they have either given away or acquired a valuable asset.

When buying or selling a business, taking unclaimed capital allowances into account can make a significant difference to the overall value of the deal:

- From a seller's perspective, the unclaimed capital allowances are a benefit that could be offered to a potential buyer as an incentive to help move the deal along or generate a Balancing Allowance.
- From a buyer's perspective, knowing that a large allowance claim can be made on a transfer substantially alters the net cost of the purchase and can make an otherwise unaffordable deal attractive.

In difficult markets, understanding the value of these unclaimed capital allowances can be key to securing a sale or affording a purchase. It also poses a risk to those involved in commercial property and advising on transactions.

### Interaction with capital gains benefits – tax relief twice over?

Discovering allowable assets embedded in the very fabric of a building means that tax savings are made in the "land and buildings" column of the balance sheet and not just in the "fixtures and fittings" column. This gives rise to a common misconception, even among qualified finance professionals. They mistakenly believe that any benefit gained by claiming capital allowances in this way will be cancelled out by a proportionate increase in the chargeable gain for capital gains tax purposes, if and when the property is sold.

The capital gains tax legislation makes it clear that there is no requirement to exclude from the sums allowable for deductions in CGT calculations, sums that have already attracted relief as capital allowances (s41(1) Taxation of Chargeable Gains Act 1992). Arguably, this is the only example in business where the same line of expenditure can attract tax relief twice over.



## Making a Joint Election

CA26850 - PMA: Fixtures: Election procedureCAA01/s200 - s201

An election under CAA01/s198 or s199 must be made by notice in writing to HMRC. It should contain the following information:

- The amount fixed by the election
- The name of each person making the election
- Information sufficient to identify the fixture and the relevant land
- Particulars of the interest acquired by or the lease granted to the purchaser
- The tax district references of each of the persons making the election

The election is irrevocable.

The time limit for making the election is two years after the time when the interest is acquired by the buyer or the buyer is granted the lease.

A copy of the election must be included with each party's return for the first period affected by it. This will normally be the period in which the disposal or acquisition takes place. Where an election is made by a partnership, it should accompany the partnership return.

The amount apportioned to the fixture must be quantified when the election is made.

There may be cases where, because of circumstances arising after the election has been made; the maximum amount is reduced below the figure specified in the election. If this happens the election is deemed to have specified the reduced maximum amount.

### Observations of current practice

We have reviewed and continue to review Section 198 Elections for property transactions. The vast majority are invalid as well as purchasers being poorly advised resulting in a lost tax benefit against their costs.

The key reasons for this are as follows:

- When supporting the buyer, too often it is deemed acceptable to agree a s198 election that states £1 for General Pool and £1 for Special Rate Pool. This restricts the buyer entirely from making any capital allowance claims against their purchase costs.
- The majority of s198 elections simply refers to 'all plant & machinery' without providing detail. This invalids the election.
- It is clear a standardised template has become common practice however each property transaction has differing factors that affects how CAA2001 s98 should be applied. Using templates dramatically increases the risk of mis-advising clients on this aspect of a transaction.

## Asset and related value apportionments

The fixtures rule works on an asset-by-asset basis. In practice, you may accept a degree of amalgamation of assets where this will not distort the tax computation. However, following the introduction of the new classification of “integral features” in respect of relevant expenditure incurred on or after 1 April 2008 (corporation tax) or 6 April 2008 (income tax), CA22300, it will be necessary to distinguish between:

- i. Fixtures that are “integral features” and so qualify for writing down allowances at the 8% rate in the special rate pool, and
- ii. Fixtures that qualify for writing down allowances at the 18% rate in the main plant and machinery pool

Because to do otherwise would have the potential to distort the tax computation, which would be unacceptable.

So, following the Finance Act 2008 changes, it is now less likely that you will be able to accept an election covering all the fixtures in a particular property without requiring some apportionment of value between groups (i) and (ii) above. It has never been regarded as reasonable to accept an election covering all the fixtures for a portfolio of properties.

Where a body of Commissioners has to determine a question relating to a s198 or s199 election:

- Each of the persons who made the election is entitled to appear and be heard by, or make written representations to, the Commissioners;
- The Commissioners will determine the question separately from any other question;
- Their determination has the effect as if it was the determination of an appeal to which each of the persons who made the election was a party.

## The Case for Specialist Help

Capital allowances are an important tax benefit for commercial property owners. For a typical business, a specialist capital allowance consultant will be able to identify capital allowances of around 20-25% of the base cost of the property, bringing a tax benefit worth tens of thousands of pounds, even to smaller businesses.

Professional accountants and financial directors will, of course, be well aware of the importance of this tax benefit and may already be working with their clients to claim it. There is, however, a strong case for employing specialist consultants to maximise claims, especially when the legislation changes make it so easy to lose entitlement altogether.

A good accountant or another business adviser will take companies through a comprehensive assessment of what they can claim with the aim of identifying all possible capital allowances and maximising their client's tax benefits. However, a good capital allowances expert will probe even deeper, finding previously undiscovered and unimagined items of allowable capital, embedded within the premises.

For most accountants, a review normally begins and ends by analysing invoices and following a paper trail. A capital allowance expert will visit the property in person and identify items that have not been captured in any paperwork. In this way, a capital allowance expert adds value to the work already done by a good, but non-specialist, accountant.

The list of allowable items is vast, so here are just a few ways a capital allowance specialist can help:

- **An office** - An accountant will count up a company's PCs, servers, and printers as allowable items since these are essential to running the business. A capital allowance expert will look further to include the floor boxes embedded in the building structure, which provide power, alongside network sockets, and phone points, all equally essential to the business.
- **A hotel** - An accountant will know how to value a hotel's furniture and soft furnishings. A capital allowance expert will know to include all those items that are integral to the building and also contribute to the business, such as those relating to thermal insulation (including radiators) and fire safety (such as smoke alarms and fire extinguishers) and, in certain circumstances, those that help to create atmosphere and ambience.
- **A sports centre** - An accountant will take into account all gym and exercise equipment in a sports centre. A capital allowance expert will look further to include items such as anti-slip or soft-impact floor surfaces. These are not integral to the building structure; however, they are essential for this type of business and are part of the cost of providing safe services.

## Supporting you

### How we work with you

A key element of a property transaction, particularly focusing on the replies to the CPSE.1 enquires, specifically Section 33, is crucial.

We offer a comprehensive solution that ensures peace of mind when confirming this document. Our approach includes a free assessment, wherein we meticulously examine the responses to Section 33 for each transaction. We confirm or advise on the given responses and, if deemed risky, provide a conclusion with support on how to challenge or rectify them.

This service liberates you from the time, expense, and hassle associated with this subject. Notably, our process stands out from other suppliers as we manage the entire process for you, extending our support for a full twelve months after the claim has been submitted, eliminating the need for you to deal directly with HMRC during this period.

Our team of experts, comprising surveyors, tax, and capital allowance specialists, conducts on-site visits to the property in question. They identify allowable items, including those within the fabric of the building, and prepare a comprehensive report for submission to HMRC. Simultaneously, we safeguard capital expenditure for any future Capital Gains Tax (CGT) calculations. In the event of HMRC challenging any claim based on our extensive survey, we stand ready to present a robust defense.

### What makes our consultative process different?

We understand the importance of the relationship between accounting practices and their clients and our consultants work in partnership with the practice to help its clients, allowing you to provide a valuable additional service to your clients without investing extra time or skills.

We will involve you in every stage of the process and will discuss our findings with you before submitting a claim to HMRC. We are only interested in offering this specialist service.

**Finally, our fees are contingent upon success so if you don't benefit, we do not charge.**

**Unlike some other providers, we carry full professional indemnity cover and have no disclaimers in place that would negate our advice or affect our responsibility and support to the claim process.**

## More information about Capital Allowance Review Service Ltd

- ✓ Visit [www.propertycapitalallowance.com](http://www.propertycapitalallowance.com)
- ✓ Email [info@capitalallowancereviewservice.com](mailto:info@capitalallowancereviewservice.com)
- ✓ Call us on 0330 174 1339



# We are the Property Capital Allowances Experts

We specialise in highlighting the tax allowances available through the Property Embedded Fixtures & Fittings (PEFFs) of commercial property. We are an award-winning trusted provider in the marketplace thanks to our experience, technical knowledge and approach to cases.

We have undertaken retrospective capital allowance claims for businesses which have resulted in repayments of tax, as well as securing tax credits going forward to offset against future tax liabilities.

Our multi-skilled team includes chartered accountants, chartered surveyors and values, chartered tax experts and an ex-HMRC inspectors, who help us to reach the highest level of due diligence and manage your claim from start-to-finish.

We have the skills essential in achieving a 100% claims record and we have used our expertise to generate claims that total of over £300,000,000.



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