



KEY CONTACTS



Tim Beresford
0121 710 1333
tim.beresford@
davislangdon.com



Paul Farey
020 7061 7139
paul.farey@
davislangdon.com



Michael Murray
0131 550 9473
michael.murray@
davislangdon.com



David Rees
023 8068 2801
david.rees@
davislangdon.com



John Goldrick
0161 819 7646
john.goldrick@
davislangdon.com

CLAIMING PLANT AND MACHINERY ALLOWANCES ON ITEMS PREVIOUSLY INCLUDED WITHIN AN INDUSTRIAL BUILDING ALLOWANCES CLAIM

Introduction

It has been quite common in the past for purchasers of qualifying industrial buildings to include the plant and machinery fixtures within their claim for industrial building allowances (IBAs). Whilst such treatment will invariably have impacted on cashflows, usually in a negative way, provided the property owner retained the industrial building until the end of the 25-year tax life of the building, eventually all the available allowances will have been claimed. Now, with the phasing out of IBAs brought in by the Finance Act 2008, this will no longer be the case. As a result of this change, owners of industrial buildings are increasingly interested in the possibility of reclassifying the plant and machinery.

The position of the property owner, as regards reclassification, will depend on the circumstances in each case. The level of plant and machinery that can be reclassified will depend on whether the current owner has included the plant and machinery within an IBA claim and the timing of that claim, whether the IBA claim was made by a previous owner, the date that the property was acquired by the previous owner and the date that the property was acquired by the current owner.

Industrial building allowances claim by current owner

Where the current owner has included plant and machinery expenditure within an IBA claim, the current owner is only able to reclassify that part of the claim relating to plant and machinery within the self assessment time limit. For example, an income taxpayer that had made an IBA claim for the tax year ended 5 April 2009 would be able to amend the claim at any time until 31 January 2011. For a corporation taxpayer, the deadline is two years from the end of the financial period in which the IBA claim was made.

The property owner cannot treat the inclusion of plant and machinery within an IBA claim as an error or mistake under Section 33 of the Taxes Management Act 1970 (TMA 1970) for income tax, or Paragraph 51 of Schedule 18 of the Finance Act 1998 (FA 1998) for corporation tax. Both Section 33 of TMA 1970 and Paragraph 51 of Schedule 18 of FA 1998 include a provision that no relief is available for an error or mistake within a claim included within a return. As a claim for Capital Allowances must be included within a return, the inclusion of plant and machinery within an IBA claim, therefore, cannot be an error or mistake.

Industrial building allowances claim by previous owner

The position, as regards reclassification, is completely different if the plant and machinery has been included in an IBA claim by a previous owner, rather than the current owner. In this situation, CAA 2001, Section 9 and Section 186 apply. Basically, the current owner will be able to reclassify the plant and machinery in accordance with the restriction set out at Section 186(3), which ensures that the current owner does not obtain plant and machinery in excess of the original cost of the items.



The above restriction is further complicated by the fact that balancing adjustments were abolished for sales of industrial buildings on or after 21 March 2007 in accordance with the Finance Act 2007, Section 36. The result of this change is to reduce the amount of plant and machinery that can be reclassified to a proportion of the unclaimed IBAs of the previous owner, without the addition of a balancing charge. Where the previous owner has been claiming IBAs for several years, the effect of no balancing adjustment will be to significantly suppress the level that can be reclassified to plant and machinery.



In addition to the increased restriction mentioned above, some of the plant and machinery may not have previously qualified for plant and machinery allowances where the property was acquired by the previous owner before April 2008. This is because some items, such as cold water installations, general lighting and power installations, only became qualifying plant and machinery under Section 33A for expenditure incurred from April 2008 (1 April for corporation tax and 6 April for income tax). As the current owner cannot satisfy the condition at Section 186(1)(a) in respect of these 'new' plant and machinery items, because they were not plant and machinery when the previous owner acquired the property, these 'new' items cannot be reclassified in accordance with Section 9.



On the other hand, where the previous owner has acquired the property from April 2008 onwards, the previous owner could have claimed plant and machinery allowances for the 'new' items (in accordance with Section 33A) and the current owner will, therefore, be able to reclassify the relevant expenditure. This will obviously provide additional value from the reclassification.

Summary

The reclassification of plant and machinery, previously included in an IBA claim, can result in a significant increase in the level of Capital Allowances available in the year that an industrial property is acquired. Such a reclassification can benefit from the availability of an annual investment allowance (AIA) in the year of expenditure (assuming that the AIA has not been utilised elsewhere) and also the fact that the reclassified expenditure will attract allowances beyond April 2011.



Finally, it will be evident from the above that the reclassification of plant and machinery is by no means a straight forward issue. Changes made by the Finance Acts of 2007 and 2008 mean that there are several factors to be taken into account. Even the items of plant and machinery that can be reclassified will depend on the circumstances of each case. The bottom line, therefore, is that there is plenty of scope to add value by reclassification, but this is certainly an area where specialist advice is recommended.

For further advice concerning any of the issues raised in this briefing, please contact one of our key individuals detailed overpage, or alternatively call our helpline on 0800 526262. Information on other property tax related topics can also be found on our website at <http://bankingtaxfinance.davislangdon.com>.