

Headley Meredith Associates

Working with Solicitors to help them understand the implications of changes to Capital Allowances legislation for the benefit of their clients.

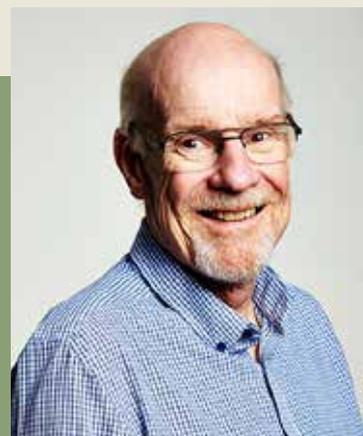
If you are a Solicitor with clients who are involved in either buying or selling commercial property we are sure you are aware of the changes brought about by the Finance Act 2012 which made certain provisions regarding Capital Allowances in property at point of sale. The requirements of CPSE 32 have meant that many Solicitors have found themselves in a situation where they are being asked to advise on areas of Tax Law that they do not feel fully comfortable dealing with. Many have simply referred it back to the clients Accountant but the problem there is that many general practice Accountants do not have the necessary resources or detailed specialist knowledge either so are unable to help fully. The result of all of that is that the client is often not advised properly or even worse, advice is given that can prejudice their rights on this matter going forward and they can be disadvantaged significantly.

This Brochure sets out to give more detail and explanation of the changes and the potential ramifications of not following the correct process and addressing this issue correctly. We should also point out that it's not only applicable to commercial property that is being sold as owners can have a review conducted at any time and thus set a pooled amount for capital allowances and apply the benefits that those allowances will bring immediately. They can even go back up to two years in terms of tax already paid. So regardless of if a client is selling or buying commercial property or just simply owns commercial property that is in ongoing use and generating profits for them then there is potential for significant allowances and potentially a repayment and/or reduction of future tax

We are a specialist in Capital Allowances in property and we work with many Solicitors and Accountants to deliver the expert specialist advice and services necessary to ensure this matter is handled properly and to everyone's best advantage. If we are brought into this as soon as your client (be it vendor or purchaser) instructs you we can ensure this matter can be handled with the minimum of disruption to yourselves or the client. We can also work with any client who owns commercial property and wishes to identify and allowances due even though they are not looking to sell. The sooner they set that pooled amount the more benefit they will have enjoyed should they decide to dispose of the property at some later date.

In order to discuss how we can provide a valuable service to you and your client we would welcome the opportunity to discuss this with you in more detail and so we would be very grateful if you would agree to an exploratory meeting in the near future that should take no more than 30 minutes or so but should prove productive.

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Are you risking litigation from unhappy clients who have lost thousands in capital allowances?



Since the introduction of the Finance Bill 2012, many solicitors have been daunted by the new legislation. The new requirements mean that Capital Allowances must be identified at the point of sale or they risk being lost forever.

We know you are keen to avoid litigation from unhappy clients and that is why we work closely with you to help you understand what is needed and obtain the best outcomes for your clients.

This brochure will offer some guidance and support to answer clients initial queries however we suggest you get specific advice. Contact us now to arrange a meeting to discuss how Headley Meredith Associates can help your business.

We're here to help by guiding you through the capital allowances maze in a way that ensures you have a better understanding of the process. Your clients can be safe in the knowledge that they are receiving the best advice to help them maximise any potential capital allowance claims on their commercial property.

Headley Meredith Associates will work as your partner of choice to get the best results for your clients and to ensure that your business is protected.

Capital allowances on commercial property can provide significant tax benefits

The Finance Bill 2012 radically changed the rules for claiming capital allowances on commercial property.

The transitional period ended in April 2014, meaning you must now be complying with the new legislation.

There is a new obligation on the seller and buyer to agree the capital allowances position or they risk losing the benefits forever - potentially costing them many thousands in tax relief and negatively impacting the future value of the property.





When to claim?

Your clients do not need to wait until they are selling the property before they claim. In actual fact, the earlier they claim the better as it increases the benefit to them. You should be contacting all your commercial clients now to offer this service.

Where your clients are in the process of selling, you must ensure that the information reported in CPSE S32 and any elections entered into are correct and complete. Failure to do so will prevent a successful claim being made to HMRC and it is therefore imperative that capital allowances are dealt with at the point of sale and not after completion.



What if they don't claim?

A failure to deal with capital allowances properly could result in a complete loss of capital allowances for current and future taxpayers who own the property. This is likely to negatively impact upon the market value of the property in the future.

These legislative changes mean the pressure on you to know more about capital allowances has increased significantly and means you must obtain complete and accurate information in order to execute purchase documents correctly. Completing documents with comments such as "Referred to Accountant" or getting clients to sign disclaimers are simply not acceptable.

Let us remove this risk to you by dealing with capital allowances on your behalf.



Improving Current Practice

In the past the CAA2001 s198 (freehold) and CAA 2001 s199 (leasehold) elections have often been completed poorly with inaccurate information or with historical detail not being taken into account and sent to HMRC – and there may be many reasons for this.

However, under the new legislation, there are legal and commercial ramifications if this continues and it is an area which will now be under much more scrutiny.

HMRC can reject the submission of an incorrect s198 or s199 election or declare it invalid. This could affect the agreement made by both the seller and buyer, and could result in the loss of allowances.

Capital Allowances are available where:

- Client is the owner of a freehold or leasehold commercial property
- Property is used in a qualifying trade
- Capital expenditure has been incurred
- Owner is a UK Taxpayer
- No previous claim has been made or restriction imposed by previous owner



Are you fully confident in the requirements and complexities of section 198/199 elections?

How to Help Your Client

Make your clients aware of the changes and the potential financial benefits. You will need the following information to ensure correct completion of all required forms:

- Confirmation of ownership
- Details of the date of property purchase and price paid
- Full details of any capital allowances claims already made
- Copies of any elections entered into
- Details of all capital expenditure incurred since property purchase

In addition, we will also need copies of the CPSE enquiries and the proposed purchase contract for the transaction in order that we may accurately report on the position.

What do the changes mean for your clients?



Section 187A — Effect of a change in ownership of a fixture.

For a seller or buyer to obtain the advantages of capital allowances in a property that is being sold, it will become mandatory for any expenditure on plant and machinery fixtures in the property to be pooled by the person who incurred it prior to the sale. This is known as the pooling requirement.





The facts about s198/s199 elections

In accordance with the Capital Allowances Act 2001 (CAA 2001), the current mechanism for agreement by the seller and buyer as to the apportionment of capital allowances for fixtures in a property interest being sold is a s198 or s199 election. The changes to the fixtures rules which were included in the 2012 Finance Bill mean elections will become mandatory for all property transactions going forward.

Taxpayers have two years from the date of the transaction to submit a s198 or s199 election. If an election is required and not submitted during the two year window, the effects of the election will not be binding and HMRC could make an alternative assessment for tax purposes. This assessment will mean that the tax liability will be higher as the allowances may not be taken into account. Ultimately, the allowances will be lost in perpetuity on that property.

The s198 or s199 election notice must be submitted to HMRC and completed correctly to be valid or the whole exercise may become void.

Given the negotiated nature of these agreements, it is highly likely that the seller and the buyer will want to reach a settlement on the value and contents of the s198 or s199 election as part of the sale process prior to completion for certainty and at a time when the purchaser at least has more leverage. If the apportionment values cannot be agreed then either party can, within the two year period of the transaction, unilaterally refer the case to an independent tax tribunal for determination.

Don't forget enhanced capital allowances

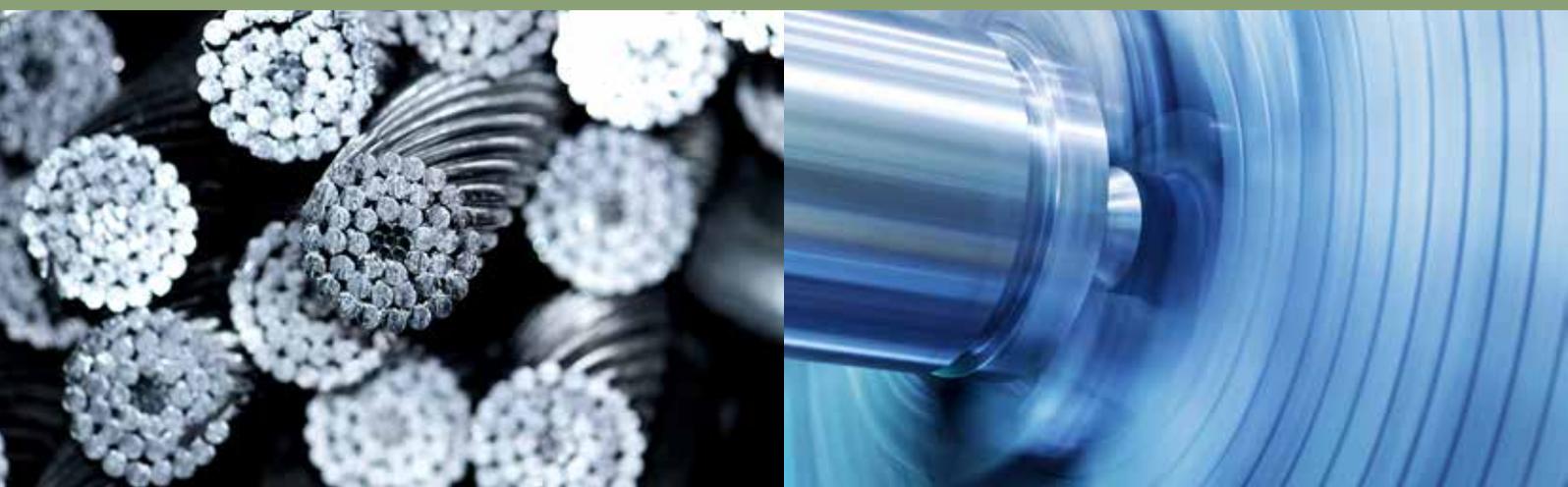
Approved energy saving or water conservation equipment is eligible for ECAs, and providing the items are registered on the Energy Technology List your client will be able to claim 100% of the value in capital allowances.

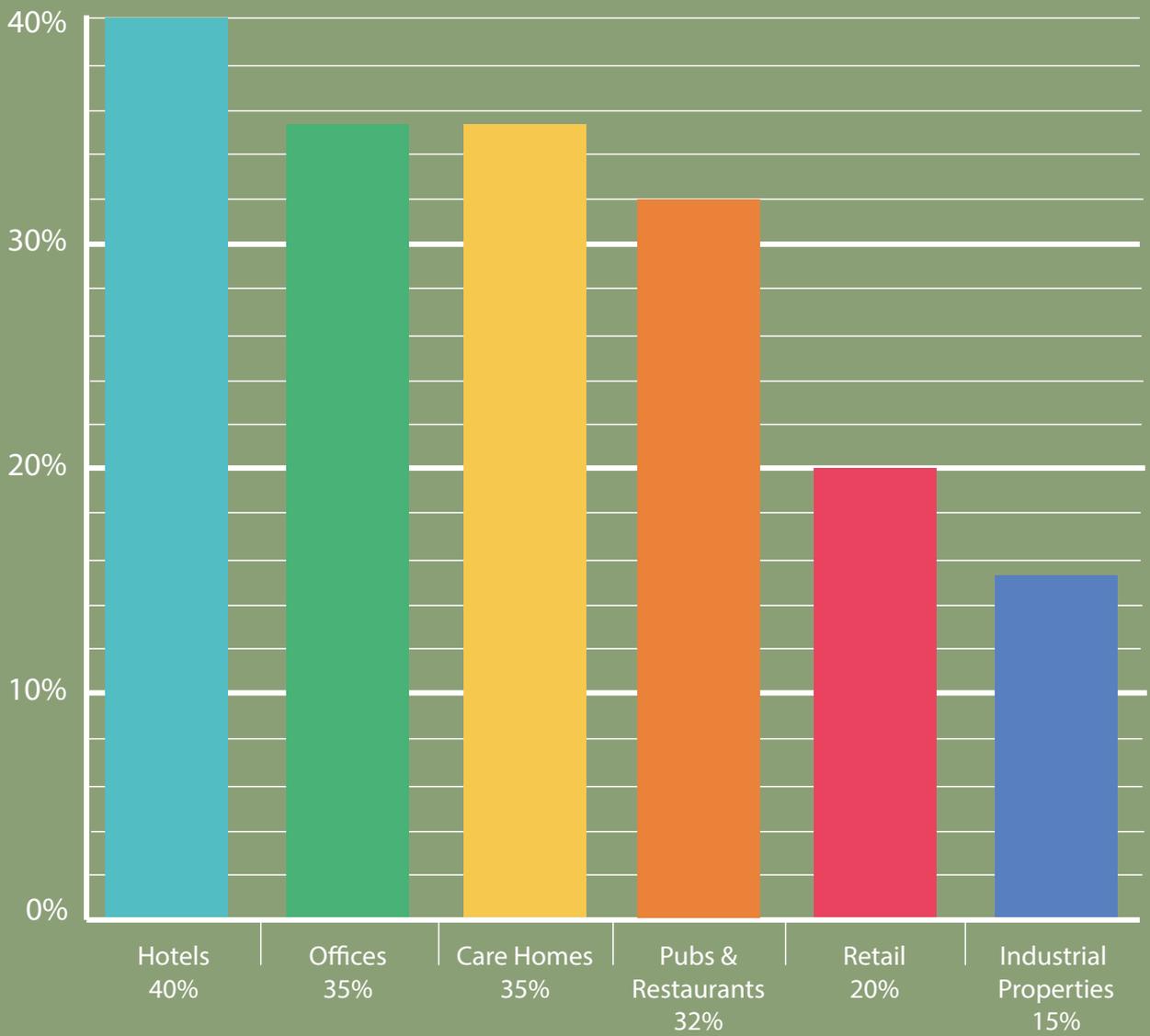
Pooling must be carried out prior to any sale or the capital allowances are forever lost.

It means it is advisable for the seller to obtain a report on the capital allowances available in their property before it is sold. The details of any expenditure identified on 'plant & machinery fixtures' must be recorded and pooled prior to the sale.

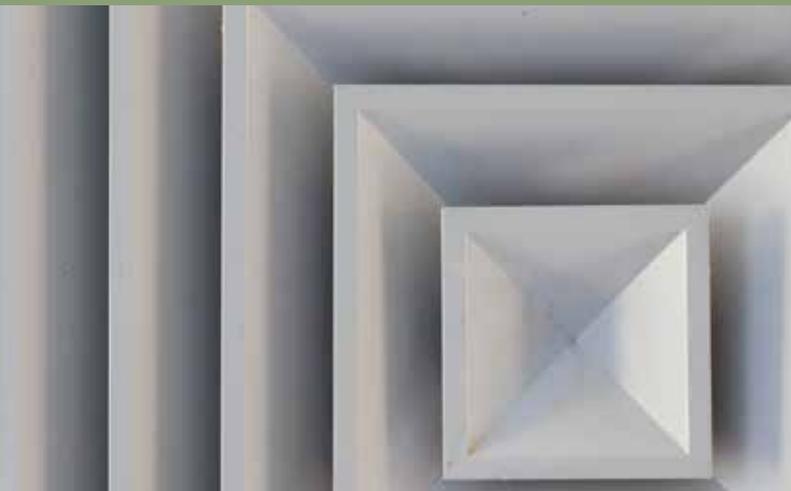
An election must be entered into to agree the value of the fixtures included as part of the sales process and all expenditure covered by the election must be clearly set out in accordance with the requirements.

They need not make a claim on any or all of the expenditure in the pools but the costs must be recorded in a tax return to HMRC to 'keep the allowances alive'.





Typical Embedded Capital Allowances claim as a proportion of property cost.





If the seller has made a capital allowances claim they will be subject to the rules about making a s198 or s199 election. If the parties cannot agree a value they can refer the decision to a Tribunal. This is called meeting the fixed value requirement.

If the purchaser acquires the property from a non-taxpayer then a written statement from them can fulfil the fixed value requirement. If the seller cannot enter into a s198 election, a disposal value statement will be required. These rules apply to subsequent purchases where the sales transaction is after the commencement date of the new rules.

In addition to the “fixed value requirement” or “the disposal value statement requirement”, purchasers that acquire property after the end of the 2-year transitional period (31st March 2014 for corporation tax and 5th April 2014 for income tax) will also have to comply with the “pooling requirement” or section 198/199 elections.

The pooling requirement is that any seller who could have claimed capital allowances must have pooled the expenditure or claimed a First Year Allowance (FYA) of 100% before the purchaser can claim allowances.



Clients should act now or they will lose out.

Clients' Best Practice

Whether or not an owner intends to sell they should be considering pooling capital allowances now to avoid the tax benefit being eroded by inflation if they can claim or lost at a later date.

If an owner intends to pass on the entitlement of capital allowances to a purchaser in an election, and they want the value to be the maximum possible for the purchaser, they can pool the allowances and bring in a disposal value equal to the pooled amount. The restriction on the purchaser to the vendors disposal value will then be the maximum value possible, provided all the eligible items have been claimed.

What if your client loses out?

Your client could lose out on claiming maximum capital allowances through deficient advice due to a lack of knowledge or expertise by you. This means you:

- Could be held liable for the loss.
- Need to ACT NOW and be aware of the implications to you and your client.
- Should take advantage of this great commercial opportunity for you both.

Points to Note

- It is best practice to keep sufficiently detailed records of all capital expenditure on commercial property incurred in your period of ownership (these will be needed at the time of sale).
- Any claims on qualifying fixtures must be correctly made to HMRC and a record kept.
- When a property is sold the vendor must have pooled the expenditure or made a claim in order to make a s198/s199 election prior to sale.
- When a property is sold a disposal value is required if a claim has been made in most cases.
- The seller has the opportunity to claim capital allowances before a property is sold at any time, provided they meet the criteria to claim.
- The buyer must be made aware of any prior claims and agree on the apportionment of all plant & machinery fixtures in an election and, this is most sensibly done at the point of exchange of contracts.
- If only part claimed, the value of unclaimed allowances will be negotiable at point of sale.
- S198 & S199 elections must be submitted to HMRC within a 2-year period of sale date.
- Failure to comply under the new rules or the requirements set out for making an election will render the claims invalid – The capital allowances will be lost if the timeframe is breached or the election is not made.





Provide a great service to
your clients without falling foul of capital
allowances legislation





Reduce the risk of litigation in capital allowances claims

It could mean litigation by your clients if you fall foul of one of these:

- HMRC do not accept enquiries regarding an election if it has not been properly completed or submitted by one or both parties and the tax benefit will be lost.
- Lack of understanding leads to many capital allowances remaining unclaimed.
- Legislation is vast and calculations complex – lack of diligence could lead to a large financial loss.
- If you are in any doubt about what needs to

be done at any point you need to involve a specialist – Headley Meredith Associates are here to help.

In the past, this simply meant that the vast majority of UK commercial properties have not had full capital allowances claimed on them. Since April 2014 though, things have become vastly more serious.

Contact Headley Meredith Associates
now to arrange a free client review



Headley Meredith Associates can help



The changes brought in by the new fixtures rules mean that many of your tax paying clients will want to be absolutely certain that they have maximised their capital allowances when they are going through the process of buying or selling a commercial property.

Demand on your time will be high as the process is time consuming and complex. We are the specialists in capital allowances when it comes to maximising the claim for tax benefits.

We would like to be your partner of choice when it comes to ensuring that your client is getting the maximum tax return that they are entitled to from their commercial property when claiming capital allowances.



Free client review

We will review your clients information to establish whether they qualify for an Embedded Capital Allowances claim and establish an approximate value for the allowances.

Survey and report

If your client could benefit from a claim, at their agreement, we will conduct a full survey of the property by one of our Chartered Surveyors and then our specialist tax team will prepare a full ECA report for submission to HMRC. We will work closely with the clients Accountants to ensure this is submitted and accepted by HMRC.

Guidance and training

We will always be available to answer any questions you or your staff may have and we can also arrange on-site training to help your staff identify potential clients (or issues) before they become a problem.

**Reduce your workload and
increase your fee income**

Headley Meredith Associates

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