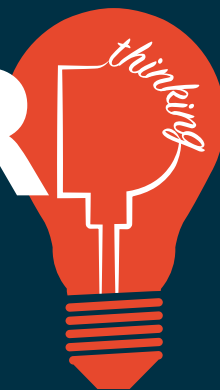


FORWARD

Winter 2021



Super-deductions widen their scope (a little)

The concept of the super-deduction, announced in the March Budget, is a novelty within the capital allowances rules, giving tax relief on more money than has been spent. So, for example, a company incurring costs of £10,000 in a given period may obtain tax relief in that period on £13,000.

So why the outburst of generosity at a time when the government is strapped for cash, almost as never before? Ostensibly, the idea is to encourage investment to help re-start the economy as we slowly emerge from Covid-19 lockdowns.

INCREASING CORPORATION TAX RATES

In reality, that is the truth but not the whole truth, as the super-deduction cannot be divorced from the coming hikes in corporation tax rates. If a company is thinking of spending £10,000 today, then without the super-deduction it would save £1,900 in corporation tax. The decision-makers could well be tempted to defer the expenditure until CT rates rise from 19% to 25%, in less than two years, so that the tax saving will instead be worth £2,500. At a time when the government wants us to spend, spend, spend, this is not the desired outcome. By offering the enhanced deduction now, the tax relief comes in at £2,470 ($£10,000 \times 130\% \times 19\%$), which will no doubt counter the temptation to wait in most cases.

CLAWBACK

Linked to the CT increases is the question of clawback. Suppose that a company incurs £1 million of qualifying expenditure today, and then sells the asset in three years from now, receiving back the same figure. That is quite possible in the context of buying and later selling commercial property.

So relief at the outset would be £247,000, calculated as £1 million of expenditure, attracting the super-deduction of 130%, and with a corporation tax rate of 19%.

The clawback on sale could be as much as £250,000 ($£1 \text{ million} \times 25\%$, being the new CT rate). Indeed, it could even be higher than that, as there will be a marginal CT rate for companies with profits between £50,000 and £250,000.

As such, the fiscal generosity may be something of a mirage. In reality, however, a well-advised seller would be unlikely to incur such a severe hit on the sale, because vendors retain a degree of control over the sale proceeds figure used for capital allowances purposes.

RESTRICTIONS

The super-deduction is available for companies only, and solely for expenditure on brand new plant and machinery in the two years to 31 March 2023.

The various "general exclusions" that apply to other first-year allowances apply here too. For example, the super-deduction is not available for the cost of cars, or for assets received by way of gift, or for assets bought from connected parties.

PROPERTY LESSORS

Another general exclusion for first-year allowances relates to plant and machinery for leasing (in contrast to annual investment allowances, which are not denied for leased assets). However, a late change put forward by the government is intended to relax this restriction to a limited extent. The relaxation will allow property lessors (if they operate through a limited company) to claim the super-deduction for certain "background" plant or machinery in leased buildings, where all other conditions are met. This category covers most landlord-provided fixtures, including lighting, computer networking, bathroom fittings, catering facilities, alarm equipment, and many other categories of asset (see SI 2007/303).

PRACTICAL APPROACH

As ever with capital allowances, the general advice is to proceed with caution. The super-deduction is certainly valuable, and the extension to corporate property lessors is very welcome. But care is needed to ensure that the client's best interests are protected. As always, a three-pronged approach is required: establish entitlement to claim, claim the maximum permitted by law, and protect the client at the point of sale. It should all be standard stuff, but there are plenty of pitfalls if insufficient care is taken.

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Technical Article

Building or apparatus (or both)

Can you claim plant or machinery allowances for buildings?

It is a fundamental capital allowances question, but any attempt to give a simple yes or no answer can only cause more problems than it solves. The latest case report from the First-tier Tribunal (FTT) provides a useful starting point for a reminder of the basic principles. The case of *JRO Griffiths v HMRC* [2021] UKFTT 257 (TC) concerned a storage warehouse for potatoes used to make crisps.

As always, case law applies statutory principles, so the starting point is always the legislation, which for these purposes is the Capital Allowances Act 2001.

Section 21 broadly states that buildings do not qualify as plant. Section 22 imposes a similar restriction for structures. It was common ground in the Griffiths appeal that the potato storage facility in question was either a building or a structure, and was therefore caught initially by either section 21 or section 22.

Both of those sections are, however, "subject to section 23". Section 23 provides some very important relaxations of the principle that no allowances are due for buildings. These include some general relaxations (e.g. for integral features) and some more specific ones (included in List C).

The company relied on two of these specific relaxations, arguing that the potato storage facility was a cold store (item 18 at List C) and/or a "silo provided for temporary storage" (item 28(a)).

Referring to the 2019 FTT decision in May, which concerned a grain storage facility (see our website for the full article), but in fact reaching its own decision irrespective of that earlier one, the FTT found clearly that the potato facility did constitute a silo for temporary storage. As in that earlier decision, the FTT here gave a much broader definition of "temporary" than that argued by HMRC, allowing a period of up to some ten months, rather than the seven days HMRC suggested.

Although it did not strictly need to do so, the FTT also found that the storage facility was a cold store. It was not necessary for the store to be mechanically refrigerated; rather, the potatoes were initially cooled and were then kept cool by the operation of the walls dispersing the heat and by the blowing of air through the crop.

As always, the facts really do matter. This was much more than just a shed, even though it looked from the outside like an ordinary commercial warehouse covered in cladding panels. There were many technical aspects of the store that contributed to the precise requirements of maintaining the required internal temperature. Again, there are many clear parallels here with the May decision.

So the potato store successfully negotiated the statutory restrictions. That, however, was not enough in itself, as it was also necessary to show that the store was plant or machinery on long-established case law principles. The FTT applied the usual familiar principles (especially apparatus v setting, and the function of the store within the business) and had no difficulty concluding that the store was not the (mere) setting of the trade but was an integral part of how the appellant carried out its qualifying activity.

To return to the question at the start – whether you can claim plant and machinery allowances for buildings – the answer is not straightforward. In the simplest terms, the answer is no, but there are very important exceptions. In practice, the most common exceptions are for fixtures (including integral features) that are rescued by s. 23. More rarely, as in this instance, it is possible that an entire building will qualify as plant, by overcoming both the statutory and the case law hurdles.

Going to tribunal on a technically complex case is expensive for taxpayers, and some will choose to back down rather than incurring costs on a case where a successful outcome may be justified but cannot be guaranteed. HMRC should take on board the messages repeatedly coming from the FTT and should back down in appropriate cases at an earlier stage.



TESTIMONIAL

I have been working with the Six Forward team for over 5 years and from the outset I was impressed with the responsiveness, reliability and the willingness to go the extra mile in all cases to protect my clients' tax positions... like others in my peer group I remain impressed by the transparent service, exceptional expertise and can-do attitude to help me to help my clients.

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MYTH VS FACT

MYTH IF AN ASSET IS IN LIST C OF SECTION 23 OF THE CAPITAL ALLOWANCES ACT IT WILL ALWAYS QUALIFY AS PLANT.

The past 12 years have introduced a variety of new concepts in relation to plant and machinery allowances, including integral features, special rate expenditure, annual investment allowances, pooling requirements and fixed value requirements. In the end, though, we must never lose sight of the first question of all, namely that of whether or not something constitutes plant and machinery in the first place. Even today, there is no statutory definition of the term "plant". The legislation tells us that certain buildings and structures do not qualify, but this is subject to some really important exceptions given at section 23 of the Capital Allowances Act. The way section 23 works, though, is in reality more complex than it first appears and the mere fact that an asset is listed at section 23 does not guarantee that it will qualify for allowances.



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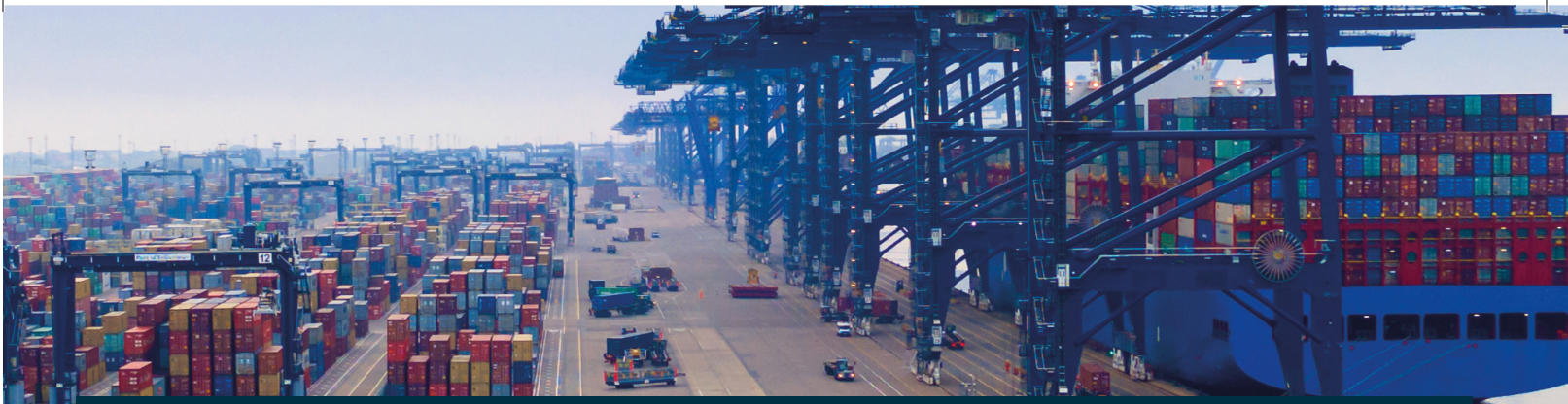
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Freeport tax sites

– the capital allowance advantages

A “freeport tax site” is a “special area” in Great Britain designated for specified capital allowances purposes. The sites also offer additional tax advantages.

The first English freeports to be announced are mostly in large coastal port areas: Liverpool, Hull and Teesside in the north; Southampton and Plymouth on the south coast; and London Gateway, Felixstowe and a zone at East Midlands airport. It is understood that discussions are ongoing regarding other parts of Great Britain but that a different model may be needed for Northern Ireland.

Freeports offer capital allowances advantages for certain expenditure:

- by companies (only) on plant and machinery; and
- by companies and others on expenditure qualifying for structures and buildings allowances (SBAs).

Detailed rules within the Capital Allowances Act can be varied by regulations to allow for adjustments at short notice. What follows is an overview of some key principles.

PLANT AND MACHINERY

Until September 2026, 100% first-year allowances (FYAs) are available for certain freeport expenditure on plant and machinery.

Companies will wish to balance claims under this heading with claims for the new “super-deduction” and for annual investment allowances (AIAs). Care will be needed because of the complex phasing-out rules that will apply when the AIA threshold reduces from April 2023.

To qualify for freeport FYAs, the plant or machinery must be for use

primarily in an area that is designated as a freeport tax site at the time the expenditure is incurred. Clawback provisions apply if the actual use differs, and various anti-avoidance rules are built in to the legislation.

The plant or machinery must be “unused and not second-hand”. So the FYAs are not available, for example, for fixtures in properties bought from someone who has already used the building.

The freeport FYAs are given for trades and certain specified concerns, but not for property businesses and not for those carrying on a profession or vocation.

The various “general exclusions” that apply for other FYAs apply equally here. For example, the FYAs are not given for cars or leased assets.

STRUCTURES AND BUILDINGS

Freeport expenditure can qualify for SBAs at an accelerated rate of 10%, rather than just 3%.

As a reminder, SBAs are available for the construction costs of certain buildings and structures, but not for residential

property or for land costs. They are not given for property fixtures, which are instead subject to the plant and machinery rules.

To qualify for the accelerated SBA, the construction of the building must begin at a time when the area in which it is situated is designated as a freeport tax site; the construction is for this purpose treated as beginning when the first contract for works is entered into. An apportionment is permitted for buildings situated only partly within a freeport tax site.

The property must be brought into first qualifying use when situated in a freeport tax site, and in any case by 30 September 2026. The person incurring the qualifying expenditure must be within the charge to either income tax or corporation tax when the expenditure is incurred.

Remember that SBAs carry a sting in the tail when it comes to calculating a capital gain on a future disposal, in a way that is not true for plant and machinery claims.

This article has been condensed from commentary in the 2021-22 edition of Capital Allowances, written by Six Forward authors and now available from Claritax Books.

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SIG (Special Interest Group)

We're delighted to be able to welcome you to the Capital Allowances SIG.

By joining this group, you'll receive the tools you need to deal with common and complex capital allowances situations to support your day-to-day client work. The SIG won't just inform you about the latest changes; its contributors will take the time to explain the implications and, most importantly, what actions you need to take for your clients. Whether you want to update your knowledge or gain a deeper understanding, the tailored content in this group can help you.

We know that the sheer volume of (and constant changes to) tax legislation in the UK can be overwhelming – new Finance Acts each year, long case law reports and sporadic updates to HMRC guidance. This SIG is an essential resource if you are looking to stay up to date with the latest technical and regulatory changes and receive practical advice.

The invitation to join SIG can be found here:
www.linkedin.com/groups/13844030

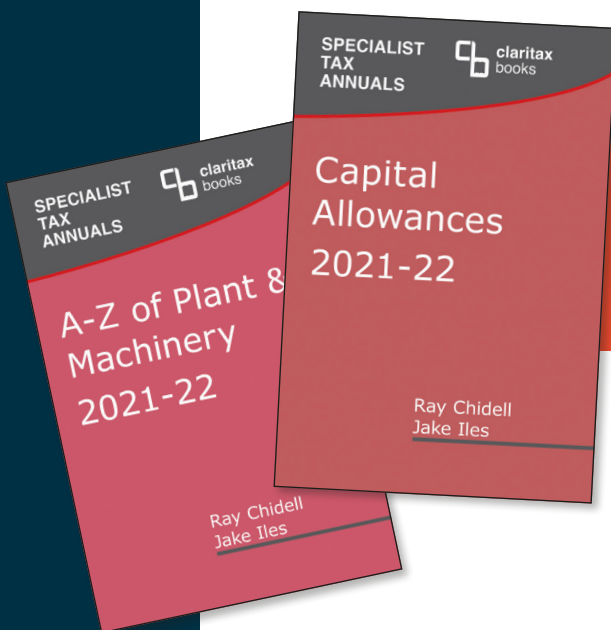
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 LinkedIn® Group

Join our SIG to read our latest article on the new super-deduction.

	BUYING	SELLING	BUILDING, EXTENDING OR IMPROVING	SPENDING
HOW ARE YOU AFFECTED?	Identify the buyer's right to claim capital allowances post-transaction.	Protect the seller's right to claim capital allowances post-transaction.	Identify all capital allowances on assets which are to be sold.	Ensure that the relevant qualifying asset expenditure has been claimed.
IMPORTANCE	In most cases, it will be best to ensure that the buyer is not considered after the event (i.e. of the time the asset is sold) as the buyer will be responsible for claiming the allowances.	Sellers should ensure that it is understood that the buyer is responsible for claiming the allowances. They also need to ensure that the buyer is aware of the need to claim allowances in respect of the asset.	If a business is sold, it may be possible to claim allowances on the asset. However, allowances will not be due if the asset is sold to a related party. The seller should ensure that the buyer is aware of the need to claim allowances in respect of the asset.	Ensure that the relevant qualifying asset expenditure has been claimed.
TIME SCALE	Prior to exchange of contracts.	Prior to exchange of contracts.	As soon as possible.	Earlier upon tax return.
INFORMATION	Early details: Property address, Date of purchase, Date of sale, etc.	Early details: Property address, Date of purchase, Date of sale, etc.	Early details: Property address, Date of purchase, Date of sale, etc.	Early details: Property address, Date of purchase, Date of sale, etc.
HOW DO I MANAGE MY CLIENTS?	Check Contract Clause: Property to be sold.	Check Contract Clause: Property to be sold.	Check Contract Clause: Property to be sold.	Check Contract Clause: Property to be sold.

RESTRICTIONS & PROVISIONS	QUALIFYING ELEMENTS	NON-QUALIFYING ELEMENTS	SOCIAL DEVELOPMENT & DD	EXCLUSIONS & EXEMPTIONS	MULTIPLE APPROPRIATION
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ASSET	COST	DEDUCTIBLE	DEPRECIABLE	RESIDUAL VALUE	DEPRECIATION PERIOD
Plant and Machinery	Cost	Yes	Yes	Nil	8 years
Leasehold Property	Cost	Yes	Yes	Nil	10 years
Freehold Property	Cost	Yes	Yes	Nil	10 years
Intangible Assets	Cost	Yes	Yes	Nil	10 years
Goodwill	Cost	Yes	Yes	Nil	10 years
Patents	Cost	Yes	Yes	Nil	10 years
Trade Marks	Cost	Yes	Yes	Nil	10 years
Copyright	Cost	Yes	Yes	Nil	10 years
Software	Cost	Yes	Yes	Nil	10 years
Research and Development	Cost	Yes	Yes	Nil	10 years
Capital Allowances	Cost	Yes	Yes	Nil	10 years
Plant and Machinery	Cost	Yes	Yes	Nil	8 years
Leasehold Property	Cost	Yes	Yes	Nil	10 years
Freehold Property	Cost	Yes	Yes	Nil	10 years
Intangible Assets	Cost	Yes	Yes	Nil	10 years
Goodwill	Cost	Yes	Yes	Nil	10 years
Patents	Cost	Yes	Yes	Nil	10 years
Trade Marks	Cost	Yes	Yes	Nil	10 years
Copyright	Cost	Yes	Yes	Nil	10 years
Software	Cost	Yes	Yes	Nil	10 years
Research and Development	Cost	Yes	Yes	Nil	10 years
Capital Allowances	Cost	Yes	Yes	Nil	10 years



Order now for 20% OFF our 2021-22 editions

Our new 2021-22 editions of Capital Allowances and the A-Z of Plant and Machinery are now available to be ordered. These include in-depth, practical coverage of the new super-deduction rules.

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