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# Commercial Property Breakfast Forum

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Tuesday 25th June 2019  
08:30-11:00am



The Find, Cheltenham



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# Agenda

- **Landlord and Tenant: Top Tips:**  
Ben Thomas, Harrison Clark Rickerbys
- **Dilapidations – How to Protect Your Assets:**  
Alec Turner, Evans Jones
- **Capital Allowances on Buildings – Can You Reduce Your Tax Bill?:**  
Sara Crowther, Crowthers Chartered Accountants



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# Landlord and Tenant: Top Tips

Ben Thomas (Partner Real Estate)

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# Observations from the Coalface



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# What I will cover:

- Is there such a thing as a Model Commercial Lease?
- Break clauses
- Repair
- Dealing
- Time is of the essence





# The Model Commercial Lease

- Litmus test?
- The Future?
- Time is of the essence



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# Break clauses

- Timing
- Conditions?
- Repayment



# Repair

- Extent?
- Schedule of condition
- Dilapidations



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# Dealing

- Assignments
- Subletting
- Sharing occupation



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# Time is of the Essence

- “By failing to prepare,  
you are preparing to fail”
- No excuses
- Caps, savvy tenants  
and their wonderful  
lawyers



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# REAL ESTATE SERVICES

## Construction and engineering

We're here for you for all project-related contracts and disputes. This includes the preparation and negotiation of development and lease agreements, main contracts, sub-contracts and terms relating to suppliers, and covering procurement and funding. We also advise on the resolution of disputes from payment to defect issues.

## New build / homes

Our full-service team can support developers, investors and landowners on all aspects of land development. We also have a specialist team which works closely with clients and developers solely in the purchase of newly built homes.

## Real estate finance

From refinancing your or your customer's property portfolio, to funding the development of commercial and residential property, our dedicated solicitors can help you to secure the loans you and your customers need to progress your transaction.

## Commercial property

If you're buying, selling, leasing or otherwise dealing with a commercial property or you just need some general legal advice we're here to help.

## Agriculture and rural affairs

Whether you're buying, selling, letting, mortgaging or looking to create rights over your land, farm or rural property, we can help. We also offer advice on negotiating agricultural tenancies, deeds of easement, creating rights over land, option agreements for the sale of development land and secured lending against your land or property.

## Planning and highways

We can tackle legal issues to help you obtain planning permission, stop someone else's application, or help get you out of trouble with the planners. We can also help you overcome problems that could affect your future development, such as compulsory purchase, public rights of way, tree preservation orders, or listed buildings.

## Residential property

We offer help with every step of buying, selling, mortgaging or transferring your property. We also offer legal advice on other residential property matters including re-mortgages, transfers of equity, new leases and lease extensions.

## Dispute resolution

We advise developers, investors and occupiers on how best to avoid, manage and resolve real estate issues, wherever they arise.



There are more than **60** lawyers in our specialist real estate team

Last year we advised on real estate transactions worth more than **£700 million** to our clients

We were involved in the buying and selling of more than **2000** homes

**95%** of claims we handled last year were settled out of court.



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## Your HCR Real Estate Team (Cheltenham)

Ben Thomas – Partner

Mark Carter – Partner

Mark Fabian - Partner

Cindy Bexfield - Partner

Annabel Hull – Senior Associate

Emme Raynsford – Associate

Morgan West - Associate

Emily Comerford – Trainee Legal Executive

Ryan Stewart – Paralegal

## A full service firm

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Construction  
Debt Recovery  
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Corporate  
Commercial  
Wills, Trust & Estates  
Family  
Banking & Finance  
Restructuring & Insolvency  
Employment & Immigration  
International  
Health & Social Care

## Overview of HCR

Top 100 UK law firm

£35m+ Turnover

8 offices

Lexcel and Investors in People accreditation

500+ staff



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## Contact

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Cambridge	T: 01223 646 518	Compass House, Chivers Way, Histon, Cambridge, CB24 9AD
Cheltenham	T: 01242 224 422	Ellenborough House, Wellington Street, Cheltenham, GL50 1YD
Hereford	T: 01432 349 670	Thorpe House, 29 Broad Street, Hereford, HR4 9AR
London	T: 0203 949 8290	35 New Broad Street, London, EC2M 1NH
Thames Valley	T: 0118 911 1206	100 Longwater Avenue, Green Park, Reading, Berkshire, RG2 6GP
Worcester	T: 01905 612 001	5 Deansway, Worcester, WR1 2JG
Wye Valley	T: 01989 562 377	Overross House, Ross Park, Ross-On-Wye, HR9 7US

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**PEOPLE ARE  
OUR PASSION**

**WHAT'S YOURS?**

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# Any Questions?

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# Dilapidations – How to Protect Your Assets

Alec Turner  
Senior Building Surveyor



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# Nobody likes to throw money away



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# Lease Renewal



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# Landlord Tips

- Document alterations.
- Inspect premises as original lease draws to an end.
- Ensure any new lease makes reference to previous lease: “reinstate alterations undertaken under previous leases”



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# Alterations



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# Landlord Tips

- Assess works at an early stage
- Know your lease
  - a) Obligations regarding giving notice
  - b) Obligations regarding timing of notice



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“50% of retail park leases signed since 1990 expire or experience lease break between now and 2025”

*Out of Town Retail Set to Struggle – Estates Gazette Research*



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# Landlord Tips

- Creditor meetings held at short notice – check registered address.
- Get ahead of CVA - consider rent concession (Category A instead of Category B).
- Consider opportunity for repair/decoration works.
- Review lease and exercise rights against guarantors.



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# Break Notice



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# Landlord Tips

- Engage with tenant prior to break to establish intentions.
- Be aware of conduct.
- Make break option personal to tenant.



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# Carrying Out Works



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# Landlord Tips

- Reasonably fit for a reasonably-minded tenant.
- Cost of works not necessarily correct measure of damages.
- Works disproportionate to benefit obtained.



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# Don't be Greedy!



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# Get in touch

Alec Turner

Chartered Building Surveyor

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T: 01242 531415 M: 07500 090477



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# Capital Allowances on Buildings

June 2019

Sara Crowther, Tax Director, Crowthers  
Chartered Accountants



# Topics

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- Capital allowances overview.
- An indication of the levels of expenditure on buildings that may be eligible for relief.
- How to claim the tax relief.
- Practical guide to maximise your clients position.



# CAPITAL ALLOWANCES OVERVIEW



# What are capital allowances?

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Tax Rule : Capital expenditure is not tax deductible

Exception : Capital allowances - Only on certain types of capital expenditure

# What are capital allowances?

Example set of Accounts

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	£	£
Sales		120,000
Cost of Sales		40,000
Gross Margin		<u>80,000</u>
Rent	5,000	
Motor Expenses	15,000	
Telephone	2,000	
General Expenses	3,000	
<b>Depreciation</b>	<b><u>10,000</u></b>	
		<u>35,000</u>
Net Profit before tax		<u><u>45,000</u></u>

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# What are capital allowances?

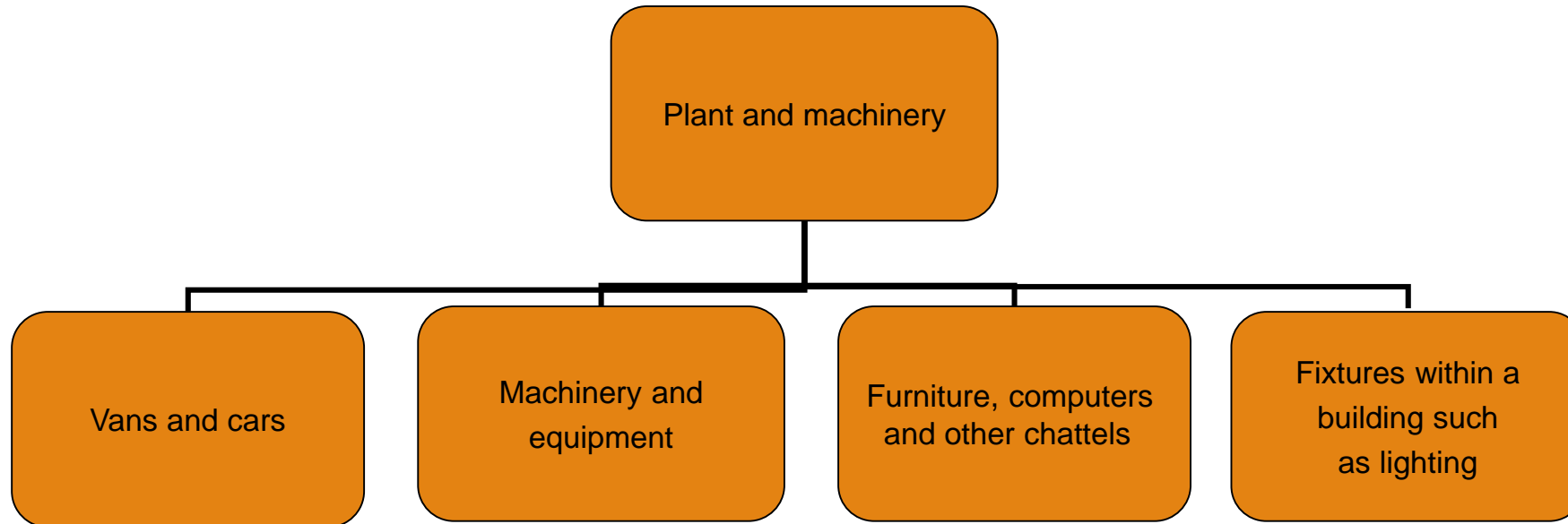
Adjustment of profits for tax purposes

	£	£
Profit per accounts		45,000
Add Backs:		
Depreciation	10,000	
Entertaining	200	
Other disallowable item	400	
		<u>10,600</u>
		55,600
Deduct:		
<b>Capital Allowances</b>		<u><b>32,200</b></u>
Taxable Profit		<u><u>23,400</u></u>



# What types of expenditure to capital allowances apply to?

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# Fixtures of a building – what can we claim on?

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## **Integral features of a building**

Specific categories of expenditure identified in the legislation:

- Electrical systems
- Cold water systems
- Space or water heating systems
- Powered systems of ventilation (air conditioning)

## **Plant and machinery**

- Alarm systems
- Kitchens
- Sanitaryware
- Blinds

# What can't we claim on?

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Buildings and structures are not plant and machinery, including:

Walls, floors, ceilings, doors, gates, shutters, windows and stairs.

Mains services, sewerage and drainage systems.

Tunnels, bridges, reservoirs etc

# Rates of allowance

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## **Integral features of a building**

8% writing down allowances

## **Plant and machinery main pool**

18% writing down allowance

## **Annual Investment Allowance (AIA)**

£1 million per year per qualifying company or group of companies (from 1 January 2019);

100% of the cost of qualifying plant and machinery.

# Rates of allowance

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## **Enhanced capital allowances**

100% allowance available on:

Energy efficient and water-saving equipment

Cars with low carbon dioxide emissions

Assets acquired for research and development activities

[www.eca.gov.uk](http://www.eca.gov.uk)

## **A few special cases**

Cars

Short-life assets

Long-life assets

Assets for leasing



# HOW MUCH OF THE BUILDING VALUE IS LIKELY TO BE ELIGIBLE FOR RELIEF?

# How much of the building value is likely to relate to fixtures?

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Historic HMRC Guidance on % of purchase price likely to be attributable to fixtures:

- Industrial building 5 – 10%
- Offices 8 – 24%
- Hotels 13 – 26%

# Examples

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Farm Cottage £175k cost, £50k eligible plant (28%)

Office block in London £5m cost, £1m eligible plant (20%)

Bed & breakfast accommodation £560k cost, £180k eligible plant (32%)

# HOW TO IDENTIFY THE VALUE OF FIXTURES WITHIN A BUILDING



# s.198 Elections

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From 2012 it became mandatory for the buyer and seller to agree an amount for the capital allowances and confirm this by a formal 'section 198' (or 'section 199') tax election.

If the parties cannot agree, either party can, within two years of the transaction, unilaterally refer the matter to a tax tribunal for an independent determination.

If a joint election is not agreed or the amount is not referred to a tribunal in time, then no capital allowances will ever be available to the buyer or any other future owner of the property.



# What is a s.198 election?

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A joint election with the seller to fix the amount attributable to **fixtures** (not chattels).

Minimum election value is £1 for each pool. This means the seller gets all the allowances.

Maximum election value is the original cost of the assets to the seller (or the price paid by the buyer if lower). This means the buyer gets all the allowances.

No requirement as to how to assess the amount i.e. entirely negotiation.

# Example of an Election

Notice of an election to use an alternative apportionment in accordance with section 198 of the Capital Allowances Act 2001

Property address:	
Interest:	
Title number:	
Seller's name and address:	
Seller's Unique Taxpayer Reference Number:	
Buyer's name and address:	
Buyer's Unique Taxpayer Reference Number:	
Date of completion of sale:	
Amount apportioned to machinery and plant fixtures in the Seller's special rate pool:	
Amount apportioned to machinery and plant fixtures in the Seller's main pool:	
Sale price:	

The Seller and the Buyer hereby jointly and severally elect pursuant to the provisions of section 198 of the CAA 2001 that the amount which, for all purposes of Part 2 of the CAA 2001, is to be taken as the portion of the sale price of the interest specified above which falls to be included as expenditure incurred by the Buyer on the provision of plant and machinery fixtures is £1. A list of the fixtures and the amount to be apportioned to them is set out below.

Integral features and other plant and machinery fixtures in the main pool



Items	Apportioned amount
	Integral features (for the Seller) and other plant and machinery fixtures allocated to the main pool (£)
Heating and ventilation systems	
Hot water systems	
Electrical switchgear	
Emergency lighting	
Fire alarm	
Electrical power to fixed plant and machinery	
Fire fighting installations	
Sanitary fittings including waste and cold water connections	
Signage	
Mechanical door fittings	
Carpets	
Entrance matting	
Blinds	
Furniture and fittings	
TOTAL	£1

Signed by/or for and on behalf of the Seller

Signed by/or for and on behalf of the Buyer

# Pooling Capital Allowances

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From April 2014 the buyer will only be able to claim if the seller has 'pooled' the capital allowances qualifying expenditure i.e. notified it to HMRC in a tax return.

'Pooling' can happen at any time after the seller has built or bought the property, but must be done before the property is subsequently sold on.

This will need to be done to determine the value of the s.198 election.

If the property was purchased before 2012 this is done using an apportionment method.

# Apportionment Method

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Before the rule changes in April 2012, when a company/business acquires a building a proportion of the consideration could be allocated to plant and machinery and integral features. This was achieved by carrying out an apportionment using HMRC's prescribed formula.

# Apportionment Calculation

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HM Revenue and Customs require that a just and reasonable apportionment of the purchase price is calculated, using the following formula:

$$\text{Purchase price} \times \frac{\text{Current replacement cost of plant}}{\text{Current replacement cost of plant, building and land}}$$

Surveyor required to identify the replacement costs.

Capping mechanism restricts the claim to the sellers tax written down value.





# Other Use Cases for the Apportionment Methodology

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The apportionment method can also be used for purchases from:

Pension funds

Developers

# ACTIONS NEEDED WHEN ACTING FOR SELLER



# What should clients selling property do?

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Pool expenditure now by reviewing invoices for additions or instructing a surveyor to complete the apportionment calculation if they have held the property for many years.

Do a £1 election and get a balancing allowance on the value of the pool identified.

Alternatively they can do a higher election value and could use this to get a higher price for the property.

# ACTIONS NEEDED WHEN ACTING FOR BUYER

# What should clients buying property do?

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Find out whether the seller has claimed capital allowances/maximised the available allowances. This needs to be done as early as possible.

If they have claimed capital allowances then negotiate a high election value.

If they have not claimed capital allowances purchaser can pay for a capital allowance survey assessment on the condition that there is a contractual term for seller to pool allowances and pass them on through an election.



# WHAT ABOUT PENSION FUNDS AND CHARITIES?



# What is one of the parties to the transaction is a Pension Fund or Charity?

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Pension funds and charities are non-taxpayers so no Capital Allowances are available to them.

## *Pension Fund Selling*

Buyer can do an apportionment calculation.

## *Pension Fund Buying*

Ideally they will sign a £1 election

However, as they do purchase commercial buildings for investment returns they may want to hold the allowances for a future tax paying owner.

# Contact Details

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**THURSDAY 19<sup>TH</sup> SEPTEMBER 2019**  
**5<sup>PM</sup>-8<sup>PM</sup>**

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**A seminar for property professionals in Cheltenham.**