



# Charities: tax considerations in buying and selling buildings

**Anne Wilson**

**Director, Tax**

## **Charities can improve the tax value of buildings they sell and should then be able to negotiate a better price.**

Charities are not usually liable to tax, and therefore capital allowances do not normally apply. But when a charity buys or sells a building the other party's tax position is important. Because of the 2014 rule changes around property transactions, it is essential to keep records of capital expenditure, including a value of the fixtures. This may allow the charity to improve the inherent tax value of the building and market the property for increased sale consideration.

### **What are considered fixtures?**

A fixture is an asset that is fixed to a building and as a matter of property law becomes part of that building.

Some items such as windows, doors, fixed partitions, and tiling are treated as part of the fabric of the building but may now be eligible for structures and buildings allowances.

Other items, however, such as kitchen units, sanitary ware, lifts, heating, and cold-water systems count as fixtures (plant and machinery) and a potential purchaser may be entitled to claim capital allowances on these as an apportionment of the purchase price.

### **Why is this important?**

The UK tax system can now provide allowances for the cost of the fabric of buildings (Structures and Buildings Allowances – SBSs). In addition, a purchaser may also be entitled to claim capital allowances on the costs of certain 'fixtures' included in the buildings (if used in a taxable trade or business).

Charities themselves are not usually liable to tax, and therefore capital allowances are of little use to them, but when a charity buys or sells a building, the other party's tax position is important. By maintaining records of capital expenditure on the buildings, or by fixing a value for the fixtures in a building that it is purchasing, a charity can help the other party to enhance the tax value of the building and should therefore be able to negotiate a better price.

### **Can a trading subsidiary claim capital allowances?**

A trading subsidiary might be able to claim allowances against the profits from its trade, but only if it had an interest in the land on which the building is located when it incurred the costs itself. In practice, disallowable depreciation in the subsidiary's tax computations will usually be higher than the claimable allowances, which means that its taxable profits will be higher than its accounting profits. This will cause problems for the annual Gift Aid payment. We advise that the charity should normally own any buildings and associated fixtures and charge rent to the subsidiary.

### **What happens on a property sale?**

Since April 2014 new rules apply, and a new owner can only make a claim for capital allowances on second-hand fixtures if the Seller had been capable of claiming capital allowances. The detailed requirements include:

- the asset must have previously been included in a capital allowances claim (the pooling requirement)
- fixtures that are eligible for capital allowances are identified and the seller and purchaser agree via a joint S.198 election, what element of the purchase consideration is allocated to these fixtures.

Where the parties do not agree, the value can be determined by the First Tier Tribunal.

Where a S198 claim cannot be made, for instance if the seller is a charity and therefore cannot make a claim, a written statement is needed by the seller that the requirement cannot be met together with a statement of the disposal value from the last owner who did claim capital allowances.

It is therefore important for a charity buying a building to ascertain the disposal value brought into the tax computations of the seller, so that these allowances can be passed on to a future buyer if necessary. This is not necessarily straightforward, and it would be very easy for these details to be overlooked on a purchase or lost.

### **What are fixtures?**

There are two main classifications of fixtures that fall into two pools; Main Pool and Special Rate Pool integral features.

Integral features are longer life plant and machinery and include electrical and hot and cold-water systems, air conditioning and lifts. The Main Pool includes all other plant and machinery that falls outside the integral features classification.

### **How can you utilise capital allowances?**

Since 2008 a business that is spending money on special rate pool integral features can claim allowances at a special lower rate (originally 10%, now 6% writing down allowance against taxable profits). Main pool is a higher rate (18% writing down allowance).

If a purchaser is buying a building which includes various integral features which were installed before 2008, and the seller has not been able to claim allowances on them, the purchaser can claim allowances on the amount of the purchase price that relates to these fixtures.

### **What should my charity consider when buying a building?**

It is important to remember that the seller will usually want to make an election under S198 to allocate a proportion of the purchase price to fixtures. If a seller has pooled and utilised capital allowances, they should insist on an election to set their disposal value.

A seller will typically want to keep the value of fixtures as low as possible to maximise its claims for allowances.

As your charity will in most cases neither need nor want to claim the allowances, there is no reason for them to resist this. However, as the allowances are of monetary value to the seller, you should not merely accede to a low value without considering whether this can be reflected in a lower purchase price for the building.

**What if the seller doesn't move on price?**

You should consider whether, on a future sale, a higher value for the fixtures might be attractive to a future purchaser.

**What impact would allowances have on a future sale?**

Even though your charity can't claim allowances on fixtures included in the building, you may need to pass on information about claims made by a previous owner to a subsequent purchaser. If your charity is not asked to enter into an S198 election by the seller, you should try to obtain a written statement from the seller that they are not capable of claiming capital allowances.

Please note that if the seller simply did not claim capital allowances, for example, if they were loss-making, they are still classed as capable of claiming and an S198 election would still be required. If no confirmation or election is obtained there is a risk that if they ever come to sell the building the future purchaser will not be able to claim allowances, due to lack of information, and may seek to take this into account when agreeing a price for the building.

**Do we need to keep a record of any new fixtures installed?**

Charities should bear in mind a possible future sale when installing fixtures in a building. This means that you should keep detailed records of the work done and the costs that can be allocated to fixtures. It is much easier to document dates and costs contemporaneously, than say 20 years later when the property comes to be sold.

For advice on the capital allowance position on potential purchases and sales, Crowe can provide due diligence and advice to place you in the best position.



## Start the conversation

### Laurence Field

Partner, Tax  
020 7842 7280  
[laurence.field@crowe.co.uk](mailto:laurence.field@crowe.co.uk)

### Anne Wilson

Director, Tax  
020 7842 7179  
[anne.wilson@crowe.co.uk](mailto:anne.wilson@crowe.co.uk)

## About us

Crowe UK is a national audit, tax, advisory and risk firm with global reach and local expertise. We are an independent member of Crowe Global, the eighth largest accounting network in the world. With exceptional knowledge of the business environment, our professionals share one commitment, to deliver excellence.

We are trusted by thousands of clients for our specialist advice, our ability to make smart decisions and our readiness to provide lasting value. Our broad technical expertise and deep market knowledge means we are well placed to offer insight and pragmatic advice to all the organisations and individuals with whom we work. Close working relationships are at the heart of our effective service delivery.



[www.crowe.co.uk](http://www.crowe.co.uk)

Crowe U.K. LLP is a member of Crowe Global, a Swiss Verein. Each member firm of Crowe Global is a separate and independent legal entity. Crowe U.K. LLP and its affiliates are not responsible or liable for any acts or omissions of Crowe Global or any other member of Crowe Global.

Crowe Global does not render any professional services and does not have an ownership or partnership interest in Crowe U.K. LLP. This material is for informational purposes only and should not be construed as financial or legal advice. You are encouraged to seek guidance specific to your circumstances from qualified advisors in your jurisdiction.

© 2023 Crowe U.K. LLP