Capital Allowances

What are capital allowances?

Capital allowances are the tax allowances available to a business when it incurs capital expenditure on assets to be used in the course of a trade or property investment business.
Businesses that may benefit from a capital allowances review:-

- Factories/Industrial Units
- Leisure Facilities
- Filling Stations/garages
- Workshops
- Depots/Warehouses
- Haulage Yards
- Office complexes
- Retail stores/showrooms
- Nursing/residential homes
- Cold storage facilities
- Staff welfare facilities
- Transport Facilities

Retrospective Claims

- We undertake a detailed review of all historic capital expenditure that could possibly yield a claim. This will involve our clients providing us with access to their fixed asset register and any available invoices, together with property purchase contracts.

- We reconstruct the history of a property and review historic purchase and refurbishment cost information to identify missed allowances.

Why claims may be overlooked?

Lack of expertise –

Unless a business has access to the appropriate level of **expertise** it is rare for all available allowances to be identified which means the majority of businesses are not claiming all of the tax allowances they are entitled to.

Complex legislation –

Tax legislation covering the availability of capital allowances is **complex**. Many of the underlying principles that determine how certain items of expenditure are treated are deeply embedded in **case law**. The problem of identifying eligible expenditure is further compounded by modern day building practices. It is commonplace for **building documentation to be very vague** and not readily elicit the detail required to formulate a comprehensive claim for the tax allowances due.

Failure to identify expenditure

The most common failure in identifying eligible expenditure arises when businesses do not identify items of plant and fixtures within buildings that they own. Items such as air conditioning systems, emergency lighting, alarms, heating systems and sanitary ware are commonplace in most commercial buildings. Typically these **costs are not segregated from the building** cost and are coded to freehold or leasehold improvements and no allowances claimed.

Misconception over claims timing

There is a common misconception that capital allowances need to be claimed when the cost is incurred. This is untrue. It is possible in the majority of situations to **claim missed allowances going back many years**, often to when a property was originally acquired.

Common queries

Isn't this something my accountant should have done already?

The majority of business owners assume their accountant has already done this, although in the vast majority of cases this exercise has not been done and there is a substantial claim available. We are not looking to duplicate any work already carried out by them we are looking only for additional eligible expenditure.
Most small businesses employ accountants primarily for book keeping purposes. It is beyond there expertise to perform such an audit.

My accountant assures me that he has claimed everything!

Your accountant will claim on everyday expenditure such as curtains, carpets, fire extinguishers, radiator covers. These items and their costs can be easily identified as they are new purchases.
When you buy a hotel you buy the land, the building attached to the land and the contents of the building. Certain items of fixed plant & machinery which make up the fabric of the building are eligible for CA relief. Only a specialist surveyor approved by HMRC can identify and allocate the correct price to these items.
You accountant is not a property expert. If your accountant hasn't undertaken a detailed survey of the property it is highly unlikely that all allowances have been claimed.

There must be some hidden costs

There are absolutely no hidden costs. Should we fail to identify an additional £25,000 in unclaimed capital allowances then there are no fees whatsoever. Should there be a claim of over £25,000 then there will be a charge of 5% plus a survey fee of £750.
If you benefit then so do we. This is a bona fide exercise fully approved by HMRC. Like many financial incentives it is up to the taxpayer to identify legislation and use it to their advantage. The taxman isn't going to knock on the door and do this for you – it is up to the individual to make a claim for what they are entitled to.

I don't want to stir up any problems with HMRC

HMRC are used to dealing with these claims and all stages of the process will be dealt with by our specialist advisors. In the unlikely event of any queries being raised then as part of our service and fee we will deal with all queries for you.

I don't want to spend time looking for information?

We require only basic information from you and we do all the work for you. As a surveyor visits the property this is where most of the analysis is done so you actually need to provide very little information.

It sounds too good to be true?

There is absolutely no catch – if you benefit then so do we. You have paid this money out – why not get some of it back.

HMRC Guidance Notes – Part 1

CA22005 - PMA: Buildings & structures: Check legislation first

If you get a claim that a building or structure qualifies for PMAs you should first check to see if it is given allowances by statute - see CA22220 onwards. If it is not then check to see whether CAA01/S21 or S22 excludes it from PMAs. The legislation in Sections 21 and 22 prevents most buildings CA22010 and structures CA22020 being plant. You must remember that the legislation does not say that an asset is plant. All it does is say that certain classes of asset are not plant. It also lists assets that are not affected by the legislation in CAA01/S22 and S23. Those assets have to satisfy the normal tests for being plant before PMAs are due.

CA22010 - PMA: Buildings & structures: Buildings

CAA01/S21

Do not give PMAs* on expenditure on the construction or acquisition of a building or an asset which:

a. is incorporated in a building,
b. although not incorporated in the building (whether because the asset is moveable or for any other reason), is in the building and is of a kind normally incorporated in a building, or
c. is in a building and is in the list below, list A.

1. Walls, floors, ceilings, doors, gates, shutters, windows and stairs
2. Mains services, and systems, for water*, electricity*and gas
3. Waste disposal systems
4. Sewerage and drainage systems
5. Shafts or other structures** in which lifts, hoists, escalators and moving walkways are installed
6. Fire safety systems*

*Unless the asset is in the list of assets CA22030 not affected by the legislation saying that most buildings and structures are not plant. If it is in that list you will have to apply the normal tests to decide whether the asset is plant.

**Although the shaft itself is not plant or machinery, where, for example, a business needs to install a lift in its existing premises for the purposes of its trade, the cost of creating the shaft qualifies for PMAs, as expenditure on alterations to an existing building incidental to the installation of plant or machinery, see CA21190.

CA22020 - PMA: Buildings & structures: Structures and works

CAA01/S22, FA08/Schedule 27/Part 2/Para33

Do not give PMAs on expenditure on the provision, construction or acquisition of a fixed structure or any asset in the list below, list B, or on any works involving the alteration of land.

Land is defined in Schedule 1 to the Interpretation Act 1978 CA22040 but if you apply that definition exclude buildings and structures.

This is list B.

1. A tunnel, bridge, viaduct, aqueduct, embankment or cutting
2. A way, hard standing (such as a pavement), road, railway, tramway, a park for vehicles or containers, or an airstrip or runway
3. An inland navigation, including a canal or basin or a navigable river
4. A dam, reservoir or barrage, including any sluices, gates, generators and other equipment associated with the dam, reservoir or barrage
5. A dock, harbour, wharf, pier, marina or jetty or any other structure in or at which vessels may be kept, or merchandise or passengers may be shipped or unshipped
6. A dike, sea wall, weir or drainage ditch
7. Any structure not within items 1 to 6 other than:

a. a structure (but not a building) which is an industrial building,
b. a structure in use for the purposes of an undertaking for the extraction, production, processing or distribution of gas, and
c. a structure in use for the purposes of a trade that consists in the provision of telecommunication, television or radio services**

**Unless the asset is in the list of assets not affected by the legislation CA22030. If it is in that list you will have to apply the normal tests to decide whether the asset is plant. There have been a few cases where a structure was found to be plant CA22050.

FA2008 abolished IBA from 1 April 2011 (CT) and 6 April 2011 (IT). The IBA legislation continues to have effect after its repeal for the purposes of section 22 (structures which are not plant).

CA22030 - PMA: Buildings & structures: Expenditure unaffected by legislation

CAA01/S23, FA08/S71(7), S72(1) & S73(1)(b)

This expenditure is not affected by the legislation saying that most buildings and structures are not plant.

Expenditure on:

- thermal insulation of industrial buildings CA22220;
- fire safety CA22230; incurred before 1 April 2008 (CT) and 6 April 2008 (IT)
- safety at designated sports grounds CA22240;
- safety at regulated stands at sports grounds CA22250;
- safety at other sports grounds CA22260;
- personal security CA22270;
- integral features CA22300 incurred on or after 1 April 2008 (CT) and on or after 6 April 2008 (IT)
- software and rights to software CA22280;
- films for which an election is made ITTOIA/S143 or F2A92/40D (repealed by FA06/S178 and Schedule 26, part 3(4) with effect from 1 January 20007);

and expenditure on any item in the list below, list C. The list does not operate by analogy: for example item 33 which refers to fixed zoo cages does not apply to any other form of animal shelter such as kennels or stables. The legislation does not say that an item in the list below is plant. All it says is that an item in the list is not affected by the legislation (in preceding sections 21 and 22), saying that most buildings and structures are not plant. But an item in the list has to pass the normal plant tests before allowances are due.

Items 1 to 16 in the list below do not include any asset whose principal purpose is to insulate or enclose the interior of a building or to provide an interior wall, floor or ceiling which (in each case) is intended to remain permanently in place.

1 Machinery (including devices for providing motive power) not within any other item in this list

2
d. Gas and sewerage systems provided mainly:to meet the particular requirements of the qualifying activity, or
e. to serve particular plant or machinery used for the purposes of the qualifying activity

3 Omitted by FA08/S73(1)(b)(ii)

4 Manufacturing or processing equipment; storage equipment (including cold rooms); display equipment; and counters, checkouts and similar equipment

5 Cookers, washing machines, dishwashers, refrigerators and similar equipment; washbasins, sinks, baths, showers, sanitary ware and similar equipment; and furniture and furnishings

6 Hoists

7 Sound insulation provided mainly to meet the particular requirements of the qualifying activity

8 Computer, telecommunication and surveillance systems (including their wiring or other links)

9 Refrigeration or cooling equipment

10 Fire alarm systems; sprinkler and other equipment for extinguishing or containing fires

11 Burglar alarm systems

12 Strong rooms in bank or building society premises; safes

13 Partition walls, where moveable and intended to be moved in the course of the qualifying activity

14 Decorative assets provided for the enjoyment of the public in hotel, restaurant or similar trades CA21130

15 Advertising hoardings; signs, displays and similar assets

16 Swimming pools (including diving boards, slides and structures on which such boards or slides are mounted) CA22060

17 Any glasshouse constructed so that the required environment (namely, air, heat, light, irrigation and temperature) for the growing of plants is provided automatically by means of devices forming an integral part of its structure CA22090

18 Cold stores CA22120

Caravans provided mainly for holiday lettings CA22100. Where a holiday caravan site is concerned, caravan includes anything that is treated as a caravan for the purposes of:

19

f. the Caravan Sites and Control of Development Act 1960 (c. 62), or
g. the Caravans Act (Northern Ireland) 1963 (c. 17 (N.I.))

20 Buildings provided for testing aircraft engines run within the buildings

21 Moveable buildings intended to be moved in the course of the qualifying activity

22 The alteration of land for the purpose only of installing plant or machinery

23 The provision of dry docks CA22050

24 The provision of any jetty or similar structure provided mainly to carry plant or machinery

25 The provision of pipelines or underground ducts or tunnels with a primary purpose of carrying utility conduits

26 The provision of towers to support floodlights

The provision of:

27

h. any reservoir incorporated into a water treatment works, or
i. any service reservoir of treated water for supply within any housing estate or other particular locality

The provision of:

28

j. silos provided for temporary storage CA22050, or
k. storage tanks

29 The provision of slurry pits or silage clamps

30 The provision of fish tanks or fish ponds

31 The provision of rails, sleepers and ballast for a railway or tramway

32 The provision of structures and other assets for providing the setting for any ride at an amusement park or exhibition

33 The provision of fixed zoo cages

CA22040 - PMA: Buildings & structures: Interests in land

Expenditure on the provision of plant or machinery does not include expenditure on the acquisition of an interest in land.

For these purposes "land" does not include:

- buildings or other structures, or
- any asset which is so installed or otherwise fixed to any description of land as to become, in law, part of the land,

but otherwise has the meaning given in Schedule 1 to the Interpretation Act 1978. According to Schedule 1 of the Interpretation Act 1978 land includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land.

Use the same definition of interest in land as you do in the fixtures legislation CA26000.

CA22050 - PMA: Buildings & structures: Cases where structure found to be plant

There have been a few cases in which a structure was found to be plant (CIR v Barclay Curle and Co Ltd 45TC221, Cooke v Beach Station Caravans Ltd 49TC514 CA22060, Schofield v R & H Hall Ltd 49TC538). The common feature is that they all involved structures (dry dock, swimming pool and grain silo) rather than buildings.

In each of those cases the structure acted as more than premises or setting. For example, the dry dock in Barclay Curle transported the ships to and from the river. There are no UK cases where a building was held to be plant.

In the Barclay Curle case the company traded as shipbuilders. It built a dry dock and claimed PMAs on it. The Inspector refused the claim. The case went all the way to the House of Lords who allowed it. The dry dock transported ships to and from the river and so effectively it was apparatus with which the company carried on its trade.

In Schofield v Hall a grain silo was found to qualify for PMAs. It distributed the grain it contained and so it functioned as apparatus.

Treat a grain silo as plant where, together with its attendant machinery, it performs a function in distributing the grain so that acts as a transit silo rather than a warehouse.

The cases where a structure was held to be plant show that a building or structure can be plant if and only if it is apparatus for carrying on the business or employed in the business rather than being the premises or place in which the business is carried on.

There was an Australian case (Wangaratta Woollen Mills Ltd v Commissioner of Taxation of the Commonwealth of Australia (1969) 43ALJR324) which you may find people quote against you. In that case a dyehouse, apart from the external walls and roof, was held to be plant. The dyehouse was held to be a complex whole in which every piece was essential for the efficient operation of the whole. What you must remember is that the external walls and roof were held not to be plant and so the building as a whole was not plant.

CA22060 - PMA: Buildings & structures: Swimming pools

In the case of Cooke v Beach Station Caravans Ltd 49TC514 a swimming pool was held to be plant. Megarry J held that the pool was part of the apparatus used for carrying on the trade of operating a caravan park. The pool formed an entity with its attendant apparatus for purifying and heating the water. The pool was apparatus used in carrying on the trade of operating the caravan park. It performed the function of providing pleasurable and safe buoyancy for the swimmer.

Give plant or machinery allowances on swimming pools provided for the trades of hotelier, caravan park operator, holiday camp operator etc. The expenditure that qualifies includes the cost of excavation, pool construction and terracing. It does not include the cost of things like changing rooms and sun lounges. If the pool is an indoor pool the building housing it is not plant.

CA22070 - PMA: Buildings & structures: Floors

Floors are in the list at CA22010 of assets that are not plant and so you should refuse a claim for plant and machinery allowances on a floor. Refuse a claim for allowances on raised and mezzanine floors. The legislation applies to them like any other floor. In the Wimpy case CA21140 the companies claimed plant and machinery allowances on raised and mezzanine floors. The refusal of the claims was upheld in the Courts. These floors were part of the premises.

You should give plant and machinery allowances on a temporary floor put down solely to enable the room to be used for dancing and on a plenum floor, which is a floor that forms part of the reticulation system of a heating or air conditioning system. For example, it may form the fourth side of a duct of channel through which stale air is extracted for treatment. Other floors covering heating and ventilation systems and computer cabling are not plant just as suspended ceilings are not plant.

In the cases of Hunt v Henry Quick Ltd and King v Bridisco Ltd 65TC108 the companies claimed plant or machinery allowances on mezzanine floors used for storage installed in warehouses. The Commissioners found that the mezzanine floors were movable temporary structures used for storage. The mezzanine floors had not become part of the premises. The kind of expenditure incurred in these cases is covered by the reference to 'storage equipment' at s.23 CAA. The fact that a mezzanine floor is not part of the premises is irrelevant. S.21 defines buildings as including assets which are not incorporated in a building but are of a kind normally incorporated in a building.

An asset is either a floor or a large shelf (storage equipment) and will rarely, if ever, be both and so the claim either fails or it succeeds in full. Please contact CT & VAT before accepting that expenditure on floors qualifies in part.

CA22080 - PMA: Buildings & structures: Ceilings

Normally suspended ceilings and acoustic tiles are not plant. They are part of the building Ceilings are in item 1 of the list at CA22010.

There was a case, Hampton v Fortes Autogrill Ltd 53TC691, where the company claimed capital allowances on false ceilings in a restaurant. The claim was refused. The ceilings' only function was to conceal service pipes, wiring etc. They were not apparatus with which the company carried on its trade of running a restaurant.

Accept that a suspended ceiling is plant if it forms an integral part of a heating and ventilation system. For example, it may form the fourth side of a duct or channel through which stale air is extracted for treatment or treated air is discharged.

Another case that involved a ceiling was an Australian case - ICI of Australia v CIR 1ATR450. The firm installed special sound absorbing ceilings in its office buildings. The ceilings consisted of acoustic tiles supported by metal frameworks attached by rods to the concrete floor above. The tiles were removable. The Courts found that they were not plant. They were part of the premises in which the company carried on its trade.

CA22090 - PMA: Buildings & structures: Glasshouses

Most glasshouses are not plant or machinery. They are buildings or structures and so are excluded from plant or machinery allowances CA22010. In the case of Grays v Seymours Garden Centre (Horticulture) 67TC401 a planteria, which was effectively an unheated glasshouse, was held not to be plant.

Accept that a glasshouse and its attendant machinery are inter-dependent and form a single entity which functions as plant in a grower's business if the following conditions are satisfied:

1. The structure and the equipment were designed as one unit to operate as a single entity.
2. It incorporates extensive computer controlled equipment, without which the structure cannot operate to achieve the optimum artificial growing environment for the particular crops involved.
3. The equipment was permanently installed during the construction of the glasshouse.
4. The equipment includes computer systems which control:

- boiler and piped heating systems,
- temperature and humidity controls,
- automatic ventilation equipment,
- automatic thermal screens or shade screens.

Depending on the crops grown, the equipment may include:

- equipment for carbon dioxide enrichment of the glasshouse atmosphere (for example for tomatoes or cucumbers),
- hydroponic culture (for tomatoes and capsicums),
- mobile benching or transport tables (for pot plant production),
- lighting to control day length or to supplement natural light (for pot and cut chrysanthemums and plant propagators).

A glasshouse that qualifies as plant is likely to be used for year round growing of high value crops. Without the benefit of a closely controlled environment there would be a limited growing season around the summer season.

CA22100 - PMA: Buildings & structures: Caravans

CAA01/S23

A caravan is plant if it does not occupy a fixed site and is regularly moved as part of normal trade usage, even if it is only moved from its summer site to winter quarters.

Accept that a caravan, which is provided mainly for holiday lettings on a holiday caravan site, is plant whether it is moved or not. Caravans occupying residential sites do not qualify for capital allowances. As far as a holiday caravan site is concerned, treat anything that is treated as a caravan for the purposes of:

1. the Caravan Sites and Control of Development Act 1960 (c. 62) (CSCDA), or
2. the Caravans Act (Northern Ireland) 1963 (c. 17 (N.I.)),

as a caravan. Those acts give caravan a wider meaning than its normal one. In them, caravan covers double units delivered in two sections and then joined together and wooden lodges provided these are moveable. But it does not cover structures that are not moveable, even if these are otherwise identical.

This wider definition in Section 23 reflects what was previously ESCB50. It only applies to caravans on holiday caravan sites. For sites in Great Britain, that means a site licensed by the local authority under the CSCDA as a holiday caravan site. It does not include a holiday camp, leisure park, hotel or conference centre.

In the 1950s an agreement was made with the National Caravan Council. It applies to trades that consist of hiring out caravans or the provision of caravan sites and covers what capital expenditure qualifies or does not qualify as expenditure on plant or machinery.

Under the agreement expenditure incurred on:

- water supplies (that is mains or other apparatus used to convey water to or around sites - and hot water systems),
- electricity supplies (that is heavy cables, distributive wiring and general electrical apparatus, and diesel generating apparatus),
- sanitary fittings, baths and wash basins,

qualifies for plant or machinery allowances.

Under the agreement no allowances are due for expenditure on:

- roads,
- proposed sites for individual caravans,
- buildings erected as sanitary blocks,
- sewage and drainage pipes installed as public health requirements.

You should only apply the agreement if the taxpayer asks for it to be applied. The taxpayer must accept the disallowances as well as the allowances for the agreement to be applied.

Give plant or machinery allowances on a caravan provided by a farmer to house a farm employee even if it occupies a fixed site and is used solely for residential purposes. This treatment applies only to farmers. It does not apply to any other cases.

CA22110 - PMA: Buildings & structures: Shelters, huts etc

Advertisers sometimes lease shelters which they have erected and which they use to display advertisements to bus companies or local authorities. If they do that you should accept that the shelters are plant or machinery but note that where the assets are fixtures the claimant must have an interest in the relevant land CA26100.

Prefabricated buildings are not plant even if they can be taken down and re-erected somewhere else (St. John's (Mountford and another) v Ward 49TC524). In the St John's School case the school claimed plant or machinery allowances on a prefabricated gymnasium and laboratory. The capital allowance claim was rejected. All that the gymnasium and laboratory did was provide housing in which the school's activities could be carried on. They were not apparatus with which the school's activities were carried on. The buildings contained plant but that was not enough to make the buildings themselves plant.

Most poultry houses / chicken shacks are buildings or structures and so are excluded from plant or machinery allowances CA22010. They are not plant even if they are used in intensive poultry production and contain automated systems for ventilation, heating, food and water.

There was an Irish case, O'Srianian v Lakeview (1984, 3ITR219), in which the Irish Courts held that the Irish tax commissioners had not erred in law when deciding that a deep-pit poultry house was a single-entity of plant. However, decisions in the Irish Courts are not binding in the UK, and it is perhaps unlikely that the UK Courts would follow that decision. Gibson L.J in the Court of Appeal in the later case of Attwood v Anduff car wash 69TC575, commented on the decision in O'Srianian v Lakeview , saying " For my part, I have considerable doubt whether the premises test was properly satisfied in that case".

Similarly, the fixed chicken cages inside a poultry house should not be accepted as plant.

Refuse a claim for PMAs on a chicken shack / poultry house unless it is moveable and intended to be moved in the course of the trade. Mobility alone is not enough.

Treat temporary huts which are moved from one site to another and used by builders and contractors to provide canteen and toilet facilities or as storage sheds as site plant. They will then qualify for plant or machinery allowances.

Do not give plant or machinery allowances on shop fronts. They are not plant or machinery. There is guidance at BIM46904 about the treatment of shop fronts.

Treat showcases associated with a shop front that are distinct from the structure as fixtures and fittings CA21200.

CA22120 - PMA: Buildings & structures: Cold stores

A refrigerated building, which is used as a cold store, may be incapable of an independent existence as a building. That is, it may consist of a refrigeration unit plus a framework and the framework may be incapable of a separate existence as a building. In that case the whole is effectively a large fridge that qualifies as plant. The taxpayer can claim whichever allowance (IBA or plant and machinery) is preferred. However, where the building houses an insulated `box', which provides the insulation, and the building, is capable of an independent existence, it is only the insulated box within the building or structure that qualifies as plant or machinery. The building itself qualifies for IBA.

CA22130 - PMA: Buildings & structures: Squash courts

You may get a claim that the cost of constructing a squash court qualifies for PMAs as expenditure on the provision of plant.

Do not accept the claim. You should apportion the expenditure.

Accept that the playing surfaces including the plaster skim on the walls, the lines, the door and the 'special' floor of a squash court are plant, as are the spotlights, ventilators etc., and give PMAs on the expenditure incurred on them.

Do not accept that the walls, foundations, roof, balcony and stairs are plant. Do not give PMAs on the part of the expenditure on the squash court incurred on them.

CA22210 - PMA: Buildings & structures: Demolition costs

CAA01/S26

This is how you deal with the net demolition costs of plant and machinery where its last use was for the purposes of a qualifying activity. Either:

- add them to the cost of the new plant if the plant is replaced, or
- add them to the qualifying expenditure for the chargeable period related to the demolition if the plant is not replaced.

The **net demolition costs** are the costs of demolition less any money received for the remains of the asset or any insurance receipts.

CA22220 - PMA: Buildings & structures: Thermal insulation of industrial buildings

CAA01/S27 - S28 & CAA01/S63 (5)/S104A. FA08/ S71

Treat expenditure incurred on adding insulation against loss of heat to a building (other than a dwelling-house used in a residential property business) occupied by a person for the purposes of a qualifying activity, as capital expenditure incurred on plant or machinery. This treatment also applies to a landlord who adds thermal insulation to a building (other than a dwelling-house) let by him in the course of his business.

PMAs are available for this expenditure if no relief (either an allowance or deduction) is otherwise available.

Treat the person who incurs the expenditure as owning the plant or machinery as a result of incurring the expenditure. This means that the expenditure can qualify for PMAs.

Before FA08, it was only expenditure incurred on the thermal insulation of industrial buildings that qualified for PMAs under CAA01/S.28. With effect from 1 April 2008 (for CT purposes) and 6 April 2008 (for IT purposes) expenditure incurred on adding thermal insulation to all buildings (apart from dwelling-houses, see below) occupied for the purpose of a qualifying activity is now eligible for PMAs.

At the same time as extending the scope of the relief, FA08 classified this expenditure as "special rate" expenditure (CAA01/S.104A). So this expenditure is now entitled to PMA WDAs at the special rate of 10% (rather than WDAs at the main rate of 20%).

Relief is only available for expenditure on thermal insulation added to an existing building. It is not available on expenditure on thermal insulation incurred as part of the original construction cost.

Example

Nalini owns and runs the Koh-i-noor Hotel. The heating bills are very high because it is an old building and loses a lot of heat. In September 2008 Nalini adds thermal insulation to the hotel hoping to reduce the heating bills. Nalini can claim PMAs at 10% p.a. on that expenditure.

Exception applying to the thermal insulation of a dwelling-house

As indicated above, expenditure incurred by a person carrying on any qualifying activity (including a property business) in adding insulation against loss of heat to a building used for the purposes of that activity generally qualifies for PMAs. But this entitlement is subject to the specific exclusion (CAA01/S35) in the case of P&M for use in a **dwelling-house**, which does not qualify for PMAs.

However, a landlord of a dwelling-house may claim a quite separate tax relief, sometimes called 'Landlord's Energy Saving Allowance' (or LESA), under either section 31ZA of ICTA or section 312 of ITTOIA (as the case may be), which at 100% (subject to a cap), is generally more favourable than a 10% WDA. So subsections (2B) and (2C) of s.28 effectively preserve the landlord's entitlement to the more favourable 100% deduction by excluding such expenditure from PMAs where LESA applies.

Disposals

If there is a disposal event CA23240 the disposal value is nil.

Expenditure covered

Give the expression `insulation against loss of heat' its ordinary meaning. Treat capital expenditure on things like roof lining, double-glazing, draught exclusion and cavity wall filling as expenditure on thermal insulation.Sometimes expenditure may be incurred for more than one reason. For example, double-glazing may be installed to insulate against both noise and loss of heat. The expenditure will qualify under Section 28 provided that it is clear that insulation against loss of heat is one of the main reasons why it was incurred.

CA22230 - PMA: Buildings & structures: Fire safety

CAA01/S29, FA08/S72

CAA01/S29, which specifically provided capital allowances on required fire precautions, is repealed for expenditure incurred on or after -

- 1 April 2008 (for corporation tax purposes) and
- 6 April 2008 (for income tax purposes).

This means that expenditure incurred by a person carrying on a qualifying activity in taking required fire precautions on or after 1 April 2008 (CT) and on or after 6 April 2008 (IT) does not qualify for PMAs unless it qualifies under the normal rules.

Expenditure on required fire precautions incurred before 1 April 2008 (corporation tax) and before 6 April 2008 (income tax)

Treat expenditure that does not already qualify for relief (either an allowance or deduction) that is incurred by a person carrying on a qualifying activity in taking required fire precautions in respect of premises used for the qualifying activity as qualifying expenditure for PMAs. For example, expenditure on a fire door can qualify under Section 29 but only if its installation is required by law.

Treat the trader as owning the plant or machinery as a result of incurring the expenditure. This means that the expenditure can qualify for PMAs. If there is a disposal event CA23240 the disposal value is nil.

A person takes required fire precautions in respect of premises if the person takes steps specified in a notice served on the person under article 31 of the Regulatory Reform (Fire Safety) Order 2005 and the expenditure was incurred before 1 April 2008 (corporation tax) or before 6 April 2008 (income tax).

Prior to 1 October 2006 the relevant fire safety legislation was section 5(4) Fire Precautions Act 1971. Premises covered by the Fire Precautions Act 1971 included hotels and boarding houses, and factory, office, shop and railway premises where people are employed. Nursing homes were not designated as qualifying buildings for the purposes of Section 5(4) Fire Precautions Act 1971 and neither were schools or colleges

PMAs are also available on expenditure for which no relief is already available incurred:

- in taking steps specified in a document sent by the fire authority; or

on fire safety work which has to be done following a Court Order under Section 10 Fire Precautions Act 1971 which prohibits the use of the premises until that work has been carried out,

The Regulatory Reform (Fire Safety) Order 2005 and the Fire Precautions Act 1971 do not cover Northern Ireland. Fire precautions expenditure incurred on premises in Northern Ireland qualifies for PMAs if it is incurred:

- to comply with a notice under Article 26(4) Fire Services (Northern Ireland) Order 1984, or
- in taking steps specified in a document sent by the fire authority for Northern Ireland, or

- on fire safety work which has to be done following a Court Order under Article 33 Fire Services (Northern Ireland) Order 1984 that prohibits the use of the premises until that work has been carried out.

A lessor who makes a contribution towards their tenant's expenditure on fire safety can claim capital allowances under CAA01/S538 CA14500. The lessor may pay directly for the fire safety work rather than make a contribution. if so, you should give allowances to the lessor provided that the relevant notice has been served and the expenditure would have qualified for allowances if the tenant had incurred it.

CA22240 - PMA: Buildings & structures: Safety at designated sports grounds

CAA01/S30

There are three separate pieces of legislation dealing with safety at sports grounds:

- Section 30 covers safety expenditure at sports grounds designated under the Safety at Sports Grounds Act 1975,
- Section 31 CA22250 covers safety expenditure incurred under the Fire Safety and Safety of Places of Sport Act 1987, and
- Section 32 CA22260 covers safety expenditure at grounds not covered by the Safety at Sports Grounds Act 1975.

PMAs are available if a person carrying on a qualifying activity takes required safety precautions at a designated sports ground used for the qualifying activity. A designated sports ground is a sports ground designated under section 1 Safety of Sports Grounds Act 1975 as requiring a certificate. Expenditure qualifies for PMAs under Section 30 if it does not already qualify for relief, either as a deduction or an allowance. The disposal value is nil.

Required safety precautions are:

- steps necessary to comply with the terms and conditions of a safety certificate that has been issued under the 1975 legislation for the ground, and
- steps specified by the local authority in a document as being steps which the local authority would take into account for the purposes of issuing, replacing or amending a safety certificate for the sports ground.

A local authority safety certificate cannot cover the provision of seats or covers over seats. This means that expenditure on seats and covers over seats cannot qualify for capital allowances under Section 30. However, expenditure on seats is likely to qualify as expenditure on plant in the normal way.

The construction of a building or structure does not normally qualify under Sections 30, 31 or 32. However, if a local authority requires the installation of a police control room, the expenditure will qualify for capital allowances provided that the normal conditions of are satisfied.

CA22250 - PMA: Buildings & structures: Safety at regulated stands at sports grounds

CAA01/S31

There are three separate pieces of legislation dealing with safety at sports grounds:

- Section 30 CA22240 covers safety expenditure at sports grounds designated under the Safety at Sports Grounds Act 1975,
- Section 31 covers safety expenditure incurred under the Fire Safety and Safety of Places of Sport Act 1987, and
- Section 32 CA22260 covers safety expenditure at grounds not covered by the Safety at Sports Grounds Act 1975.

PMAs are available if a person carrying on a qualifying activity takes required safety precautions at a stand at a sports ground whose use requires a safety certificate under Part III Fire Safety and Safety of Places of Sport Act 1987 and which is used for the qualifying activity. Expenditure qualifies for PMAs under section 30 if it does not already qualify for relief, either as a deduction or an allowance. The disposal value is nil.

Required safety precautions are;

- steps necessary to comply with the terms and conditions of a safety certificate that has been issued under the 1987 legislation for the stand, or
- steps specified by the local authority in a document as being steps which the local authority would take into account for the purposes of issuing, replacing or amending a safety certificate for the stand.

A local authority safety certificate cannot cover the provision of seats or covers over seats. This means that expenditure on seats and covers over seats cannot qualify for capital allowances under Section 31. However, expenditure on seats is likely to qualify as expenditure on plant in the normal way.

The construction of a building or structure does not normally qualify under Section 31. However, if a local authority requires the installation of a police control room, the

expenditure will qualify for capital allowances provided that the normal conditions of are satisfied.

CA22260 - PMA: Buildings & structures: Safety at other sports grounds

CAA01/S32

There are three separate pieces of legislation dealing with safety at sports grounds:

- Section 30 CA22240 covers safety expenditure at sports grounds designated under the Safety at Sports Grounds Act 1975,
- Section 31 CA22250 covers safety expenditure incurred under the Fire Safety and Safety of Places of Sport Act 1987, and
- Section 32 covers safety expenditure at grounds not covered by the Safety at Sports Grounds Act 1975.

PMAs are available if a person carrying on a qualifying activity takes required safety precautions for a sports ground used for the qualifying activity which is of the kind described in Section 1(1) Safety of Sports Ground Act 1975 but which does not have a designation order. Section 32 does not apply to expenditure on a sports stand to which Section 31 applies CA22250 or to expenditure for which relief is already available, either as a deduction or an allowance. The disposal value is nil.

Required safety precautions are steps that the local authority for the area in which the ground is situated certifies would have been required safety precautions for Section 30 CA22240 if there had been a designation order and a safety certificate had been issued or applied for.

A local authority safety certificate cannot cover the provision of seats or covers over seats. This means that expenditure on seats and covers over seats cannot qualify for capital allowances under Sections 30, 31 or 32. However, expenditure on seats is likely to qualify as expenditure on plant in the normal way.

The construction of a building or structure does not normally qualify under Sections 30, 31 or 32. However, if a local authority requires the installation of a police control room, the expenditure will qualify for capital allowances provided that the normal conditions of are satisfied.

CA22270 - PMA: Buildings & structures: Personal security

CAA01/S33

PMAs are available if an individual, or a partnership of individuals, (but **not** a company) carrying on a trade, profession or vocation incurs expenditure in connection with the provision for, or use by, the individual, or any of the individuals, of a security asset and there is a special threat. They are also available where the individual or partnership carries on an ordinary property business, furnished holiday lettings business or overseas property business. Expenditure qualifies for PMAs under Section 33 if it does not already qualify for relief, either as a deduction or an allowance. The disposal value is nil.

A special threat is a threat to the individual's personal physical security that arises wholly or mainly because of the trade etc.

A security asset is an asset that improves personal security.

For this purpose asset includes:

- equipment,
- a structure (such as a wall), and
- an asset which becomes fixed to land.

Assets like alarm systems, bullet resistant windows, reinforced doors and windows, and perimeter walls and fences are the sort of assets that may qualify as security assets.

The following assets are not security assets:

- cars, ships or aircraft,
- a dwelling,
- grounds appurtenant to a dwelling.

Give dwelling its normal meaning. A flat used as a residence, including a flat above business premises, is a dwelling but a block of flats is not a single dwelling.

Follow the guidance at CG64362 onwards about what are the garden or grounds of a dwelling house for the purposes of the Capital Gains Tax private residence exemption if you have to decide what are grounds appurtenant to a dwelling.

Give PMAs on the whole of the expenditure where:

- there is another use for the asset which is incidental to the use for personal physical security, or
- the asset improves the personal physical security of a member of the individual's family or household, as well as the individual's own personal physical security.

Where a security asset is intended to be used partly to improve personal physical security and partly for other reasons, only an appropriate proportion of the expenditure on the asset is to qualify for an allowance. The appropriate proportion is that attributable to the intended use to improve physical security.

CA22280 - PMA: Buildings & structures: Computer software

CAA01/S71

Treat computer software as plant whether or not it would normally be treated as plant.

You should also treat the right to use or otherwise deal with computer software and the software to which the right relates as plant.

Computer software is not defined in the legislation. You should treat computer programs and data of any kind as computer software but **not** the information stored on the software such as the contents of a spreadsheet. Software is sometimes transferred by electronic means. In such a case there is no physical asset. Expenditure incurred on acquiring software outright qualifies for allowances even if there is no physical asset.

CA10020 - Introduction: Scope of manual
This manual contains guidance about capital allowances.

Capital allowances let taxpayers write off the cost of certain capital assets against taxable income. They take the place of depreciation charged in the commercial accounts, which is not normally deductible for tax purposes.

Not every type of capital expenditure qualifies for capital allowances. For example, expenditure on the following does not qualify:

commercial buildings (apart from expenditure on buildings qualifying for Enterprise Zone Allowances, Research & Development Allowances or Business Premises Renovation Allowances);
residential buildings;

land and
some intangibles, such as trade marks and goodwill.
The capital allowances currently available are given for capital expenditure on:
the provision of machinery or plant, see CA20000 onwards;
industrial buildings, qualifying hotels and commercial buildings in enterprise zones, see CA30000 onwards;
agricultural buildings and works, see CA40000 onwards;
the conversion or renovation of unused space above shops and other commercial premises into flats, see CA43000 onwards;
the conversion or renovation of unused business premises in Assisted Areas, see CA45000 onwards;
mineral extraction, see CA50000 onwards;
research and development (formerly scientific research), see CA60000 onwards;
know-how, see CA70000 onwards;
patents, see CA75000 onwards;
dredging, see CA80000 onwards;
constructing buildings for letting under the assured tenancies scheme (but only for expenditure incurred in 1982 - 1992), see CA85000 onwards.

CA10030 - Introduction: Abbreviations used

ABA	Agricultural buildings allowance
AIA	Annual investment allowance
ATA	Assured tenancies allowance
BPRA	Business premises renovation allowance
CAA01	Capital Allowances Act 2001
CT	Corporation tax
EZA	Enterprise Zone Allowance
FCA	Flat conversion allowance
FOTS	Flats over shops
FYA	First year allowance
IA	Initial allowance
IBA	Industrial buildings allowance
ICTA88	Income & Corporation Taxes Act 1988
IT	Income tax
ITA	Income tax act 2007
ITEPA03	Income tax (Earnings and Pensions) Act 2003

ITTOIA	Income Tax (Trading and Other Income) Act 2005
MEA	Mineral extraction allowance
P&M	Plant and machinery
PMA	Plant and machinery allowance
R&D	Research and development
RDA	Research and development allowance
SME	Small or medium-sized enterprise
SRA	Scientific research allowance
TCGA	Taxation of Chargeable Gains Act 1992
UK	United Kingdom
VAT	Value added tax
WDA	Writing down allowance

A BRIEF HISTORY ON CAPITAL ALLOWANCES

The early years

Until 1878 there were no capital allowances though there were deductions for expenditure incurred in renewing or replacing existing machinery or plant. In 1878 a "wear and tear" deduction was introduced. Wear and tear allowance represented the diminished value of plant and machinery used for trade purposes by reason of wear and tear during the year. The amount allowed was whatever was considered "just and reasonable". A similar deduction based on annual value was available for expenditure on mills and factories. It was called mills and factories allowance. These deductions gave tax relief for an amount broadly equal to the actual economic depreciation suffered.

The post war system

The Income Tax Act 1945 put in place a system of capital allowances designed to encourage and assist the reconstruction of British industry after the war.

From 1946 the previous system of wear and tear allowances for plant and machinery was replaced by a new system of initial allowances, writing-down allowances, balancing allowances and balancing charges:

An initial allowance (i.e. first year allowance) of 20% for plant and machinery for the first year was introduced to encourage investment in new machinery.
The annual rate of writing-down allowances for plant and machinery was set at 25%, which was above the rate of depreciation generally considered to be just and reasonable.
A balancing adjustment (which could be an allowance or a charge) was made when the asset was sold or ceased to exist to ensure that the overall relief given equalled the actual reduction in value over the period of ownership.
The Board of Inland Revenue could fix rates of writing-down allowance for different classes of plant and machinery. The rates were based on the anticipated normal working life of plant and machinery in each class. They were published and could be amended, as required.
Industrial buildings allowances replaced the mills and factories allowance. The main features were:

An initial allowance of 10% for new buildings for the first year was introduced to encourage investment in new buildings.
The annual rate of writing-down allowance was set at 2%.
A balancing adjustment (which could be an allowance or a charge) was made when the asset was sold or ceased to exist to ensure that the overall relief given equalled the actual reduction in value over the period of ownership.

Industrial buildings and structures that qualified for the new allowances were defined in the legislation. Shops, offices, hotels and dwelling houses were specifically excluded as the purpose of the relief was to "help the productive or creative industry that gives industrial employment and is the foundation of national prosperity: from the point of view of national prosperity it is the production of things and the export of things and not the retail distribution at home of things that matters."

Agricultural buildings allowance replaced the special relief given to agricultural landowners under the old Schedule A rules. The rate of allowance was set at 10% (rather than the 2% for industrial buildings) following strong opposition from farmers and landowners to any reduction in the generous relief that they had enjoyed previously.

Investment allowances

An "investment allowance" was introduced in 1954 to encourage investment in new plant and machinery, mining works, industrial and agricultural buildings, and buildings and plant used for scientific research. Investment allowances were given in addition to initial and annual allowances. This meant that businesses could receive allowances over the period of ownership of more than the asset had actually cost.

The investment allowance was set at a rate of 10% for agricultural and industrial buildings and 20% for other qualifying assets. Investment allowances continued on and off at various rates until 1966. Then they were replaced by direct grants administered by the Board of Trade.

The method of making claims for plant and machinery by reference to a wide range of different rates of writing-down allowance set out in published lists continued until 1962. In a move to reduce the burden on business and simplify the process of claiming capital allowances, the number of rates was then reduced to three (15%, 20% and 25%) and taxpayers were allowed to pool expenditure within each category for the purposes of calculating writing-down allowances. This was a considerable simplification, but difficulties still remained where assets were sold or scrapped, as the pool had to be unscrambled to calculate the balancing allowance or charge.

The 1971 system

There was a further major simplification in 1971. The number of rates of writing-down allowance for plant and machinery were reduced to just one at 25%. The rules for pooling were extended so as largely to eliminate the need for balancing allowances and charges. This was a considerable simplification and greatly reduced the record- keeping requirements and the number of computations needed for tax purposes.

1984 reforms
In 1984 the then Chancellor of the Exchequer, Nigel Lawson, started a series of reforms to create a more neutral, broader based tax system. Initial allowances and first year allowances were phased out over three years. The 1984 business tax reforms brought capital allowances closer into line with actual rates of commercial depreciation. Allowances were set at 25% for plant and machinery, 4% for industrial and agricultural buildings.

Developments after 1984
Short-life assets: For assets with lives of less than 4 years, the 25% rate for plant and machinery was recognised as representing less than economic depreciation. To adjust for this, from 1985 taxpayers have been able to elect to keep specific assets out of the general pool. If the asset is then sold or scrapped within 4 years a balancing allowance or charge is made, bringing the allowances given into line with the actual economic depreciation of the asset.

Long-life assets: In 1996 the then Government introduced a new 6% rate of allowance for plant and machinery with an expected life of more than 25 years when new. This was a further step towards greater neutrality of the tax system, bringing allowances more closely into line with rates of economic depreciation. The rules only apply to businesses which spend more than £100,000 a year on long-life assets.

Return of incentive allowances
First-year allowance for plant and machinery and initial allowances for industrial and agricultural buildings were reintroduced on a temporary basis for expenditure incurred in the year ended 31 October 1993.

First-year allowances (FYAs) were introduced again for expenditure incurred by small and medium sized enterprises from 2 July 1998 to April 2008; the rate varied over this period, but was either 40% or 50%. 100% FYAs were introduced for assets purchased by small and medium-sized businesses in the period 12 May 1998 to 11 May 2002 for use primarily in Northern Ireland. Subsequently, other 100% FYAs targeted to encourage particular types of socially desirable investment were introduced for expenditure on:

ICT by small businesses, between 1 April 2000 and 31 March 2004;
energy-saving plant and machinery, from 1 April 2001;
cars with low carbon dioxide emissions, from 17 April 2002;
plant or machinery for gas refuelling stations, from 17 April 2002;
plant or machinery for use wholly in a ring fence trade, from 17 April 2002;
environmentally beneficial plant and machinery, from 1 April 2003

Other new allowances
Two new codes of allowances (not restricted solely to expenditure on plant or machinery) were introduced in the early years of the 21st century: Flat conversion allowances (FCAs) were introduced by FA2001. Business premises renovation allowances (BPRA) were introduced by FA2004, but the scheme did not come into effect until 11 April 2007.

The FA2008 reforms
The capital allowances changes introduced in FA2008 represented the biggest reform of the capital allowances system since the 1980s. The changes were part of a wider 'Business Tax Reform' package, which included a 2% cut in the main rate of corporation tax. The reforms had three main objectives: (1) to promote investment and growth; (2) to reduce distortions and complexity and (3) to maintain fairness and refocus the tax system for smaller businesses. The main capital allowances changes were:

The introduction of a new Annual Investment Allowance (AIA), which is effectively a 100% allowance for business expenditure on plant and machinery (apart from cars) up to £50,000 a year. The AIA applies to businesses regardless of size, and replaced the previous 40% or 50% FYAS for small and medium-sized businesses only.
A new small pools allowance, allowing historic and future pools of plant and machinery expenditure of £1,000 or less to be written-off immediately.
New payable tax credits for businesses that make losses attributable to investment in environmentally beneficial plant and machinery.
The phased withdrawal of industrial and agricultural buildings allowances by 2011.
Changes to the rates of capital allowances on plant & machinery: from 25% to 20% for the main pool, and from 6% to 10% for long-life assets in the new special rate pool.
The introduction of a new classification of "integral features" of a building or structure to apply to new and replacement expenditure and which will attract 10% allowances in the special rate pool.

Consolidation
The capital allowance legislation was consolidated in 1990 in CAA90 apart from the legislation on patents and know-how, which stayed in ICTA88. The legislation was rewritten in 2000 and all of the capital allowance legislation is now in CAA2001. You can find CAA2001 and the explanatory notes that go with it on the Intranet or on the Internet at www.hmso.gov.uk/acts/acts 2001.

CA10050 - Introduction: Where to find the capital allowance legislation
The capital allowances legislation is in the Capital Allowances Act 2001 (CAA01). Before that it was mainly in CAA90 apart from the legislation about patents and know-how, which was in ICTA88 Chapter 1 Part XIII.

HMRC Guidance Notes – Part 2

CA21010 - PMA: Meaning of plant & machinery: General approach to claims

The capital allowance legislation does not define plant and machinery. Legislation that says that most buildings, parts of buildings and structures are not plant or machinery was introduced in 1994. It is now in CAA01/S21 & 22.

The exclusions in SS21 & 22 do not, however, apply to the types of expenditure specifically listed in S23(2) (which include some types of expenditure on buildings). The rules provide that expenditure on the items specified in S23 (2) are to be treated as if they were plant or machinery for capital allowance purposes. The items listed are:

- Thermal Insulation added to qualifying buildings CA22220,
- Expenditure on fire safety in certain buildings CA22230 if incurred before 1 April 2008 (CT) or 6 April 2008 (IT),
- Safety costs at designated sports grounds CA22240,
- Safety costs at regulated stands at sports grounds CA22250,
- Safety costs at other sports grounds CA22260,
- Expenditure on personal safety due to a special threat CA22270,
- Expenditure on the provision or replacement of integral features CA22300,
- Computer software CA22280.
- Films for which an election is made ITTOIA/S143 or F ((No.2) A92/40D (repealed by FA06/S178 and Schedule 26, part 3(4) with effect from 1 January 2007).

In addition, S23 contains a 'list C', which lists numerous items that are not affected by the SS21 & 22 exclusions, see CA22030. These are described further below. Apart from that there is no guidance about the meaning of plant and machinery in the legislation.

The meaning of the word "machinery" should not cause you any problems. Machinery includes machines and the working parts of machines. A machine usually has moving parts. Assets like motor vehicles and lathes are machines. Computers and similar electronic devices are also machinery. You may find machinery in places where you might not expect it. For example, door handles with moving parts are machinery CA21200.

The meaning of the term "plant" can be more difficult. When you get a capital allowance claim you should first check whether the asset is covered by the legislation that says that some assets are plant CA22220 onwards (see the bulleted list above). If it is, accept the CA claim (assuming the other conditions about expenditure, ownership and so on are met).

If it is not, check to see if it is excluded by the legislation that says that most buildings and structures are not plant or machinery. the legislation at CAA01/S21 &S22 prevents most buildings CA22010 and structures CA22020 from being plant. The legislation operates by identifying specific assets that are treated as buildings or structures, detailing the main ones in lists A and B.

You must remember that the legislation does not say that an asset is plant. All it does is say that certain classes of asset are not plant. In Section 23 it lists in list C CA22030 assets that are not affected by the legislation in Sections 21 and 22. This does not necessarily mean that those assets are plant or machinery. Those assets still have to satisfy the normal tests for being plant before PMAs are due. It is important to remember that the legislation does not work by analogy and the items in list C are specific.

If Sections 21 to 23 do not exclude an item and that item is not specifically mentioned in this guidance you should apply the tax case tests that are set out in Wimpy International Restaurants Ltd v Warland CA21140. These tests are:

- is the item stock in trade?
- is the item the business premises or part of the business premises (the premises test)?
- is the item used for carrying on the business (the business use test)?

If the answers are no to the first two and yes to the last the item is plant.

CA21100 - PMA: Meaning of plant & machinery: Development of case law

Since there is no statutory definition of plant guidance about the meaning of plant has to be found in case law. The cases about the meaning of plant go back a long way. The first case in which the meaning of plant was considered was Yarmouth v France (1887) 19QBD647. It was not a tax case but was a case under the Employer's Liability Act 1880. In that case Lindley LJ said that:

"In its ordinary sense it (that is, plant) includes whatever apparatus is used by a businessman for carrying on his business - not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in the business."

So a condition that has to be satisfied for an asset to be plant in a business is that it is kept for permanent employment in that business. In the case of Hinton v Madden & Ireland Ltd. 38TC391, knives and lasts which had an average life of 3 years and which were used by a shoemaker were held to be plant. You should accept that an asset that

has an expected life of two years or more (the **2 year test)** is sufficiently durable to be plant.

Yarmouth v France made it clear that something that is not used for carrying on the business is not plant. It also made it clear that "plant" excludes stock in trade. The final words of the quotation above also made it clear that the business premises are not plant because they are not goods or chattels employed in carrying on the business. Rather, they are the place in which the business is conducted.

The test of whether an item is apparatus used in carrying on a business is sometimes called the **functional test**. It is set out in the case of Benson v The Yard Arm Club Ltd. 53TC67. In that case Buckley LJ said:

" The functional test provides the criterion to be applied. Is the subject matter the apparatus or part of the apparatus employed in carrying on the activities of the business".

In Benson v The Yard Arm Club Ltd the company claimed plant and machinery allowances on an old ship that was adapted for use as a floating restaurant. The capital allowance claim was refused. The ship was the structure within which the restaurant trade was carried on rather than apparatus with which it was carried on. In the Court of Appeal, Templeman, LJ said that he could see no distinction between a restaurant on the Thames and a fish and chip shop in Bethnal Green. Both act as premises in which the trade is carried on.

You should find the Court of Appeal judgements in the Yard Arm Club case useful. One of them is mentioned above. In another Court of Appeal judgement Shaw LJ said "a characteristic of plant appears to be that it is an adjunct to the carrying on of a business and not the essential site or core of the business itself".

In the third Court of Appeal judgement Templeman LJ said "if and only if land, premises or structures in addition to their primary purpose perform the function of plant in that they are the means by which a trading operation is carried out.....the land, premises or structures are treated as plant'" Later on he made it clear that premises only become plant if they function as plant.

Note that the functional test is not whether an asset has a function. All business assets have a function. The functional test is whether the asset functions as apparatus used in carrying on the activities of the business. For example, an asset that functions as the business premises is not plant. It is not apparatus used in carrying on the activities of the business.

CA21110 - PMA: Meaning of plant & machinery: Setting

The next case about the meaning of plant which you may find useful was a case involving a claim under the War Damage Act 1943, J Lyons and Co. Ltd. v Attorney General (1944), page 281. The War Damage Act gave compensation for damage to land and defined land as including buildings or plant. The company claimed that some lamps that were destroyed by enemy action were plant and so qualified for compensation under the War Damage Act. The lamps were not part of the building and so the question was whether they were plant.

The judge, Uthwatt J, rejected the claim. He said that the question that had to be decided was whether the lamps were part of the setting in which the business was carried on or part of the apparatus used for carrying on the business. He decided that the lamps were not plant because they were part of the general setting in which the business was carried on. They were not apparatus with which the business was carried on.

Yarmouth v France showed that the business premises are not plant. The J Lyons case showed that assets that are not part of the business premises but are still part of the setting would not normally be plant. The setting is not generally apparatus with which the trade is carried on.

CA21120 - PMA: Meaning of plant & machinery: When setting is plant

Generally an asset that is part of the setting is not plant. However there have been a few cases where items which are part of the setting, but not part of the business premises, were held to be plant as they were also part of the of the apparatus with which the trade was carried on.

In the case of Jarrold v John Good & Sons Ltd. 40TC681, moveable partitions were held to be plant. The partitions were part of the setting but were not part of the premises in which the trade was carried on. The Commissioners found as a fact that as a matter of commercial necessity the partitions had to possess mobility and flexibility for the day to day running of the business. They were apparatus with which the company carried on its business.

The John Good case does not mean that all moveable partitions are plant. It you get a claim that moveable partitions are plant you should check to see if they need to possess mobility as a matter of commercial necessity before you accept the claim. It is also worth checking whether they have in fact ever been moved.

Another case where items which were part of the setting in which the trade was carried on were held to be plant is the case of Leeds Permanent Building Society v Proctor 56TC293. In that case, the society claimed that decorative screens used for window displays were plant. The capital allowance claim was refused and the society appealed. The Inspector won at the Commissioners and so the society appealed to the High Court, where it won.

The Commissioners found that the purpose of the screens was to attract the attention of passers by and so bring business to the society. The High Court held that the window screens were part of the shop furniture with which the trade of the society was carried on in the branch office concerned. The screens were not capable of use without considerable modification for any business but that of the Leeds Permanent Building Society and indeed some were of such a character that they were really only of use in the particular branch. They were removed by the society when it left a branch office and were designed specifically for the society's business.

CA21130 - PMA: Meaning of plant & machinery: Décor

C.I.R. v Scottish & Newcastle Breweries Ltd. 55TC252 also involved the setting in which a trade was carried on. The company spent money on light fittings and wiring, and decorative items such as wall plaques, tapestries, murals, prints and sculptures. It claimed plant or machinery allowances. The Inspector refused the claim and the company appealed to the Special Commissioners.

The Special Commissioners found that the electric wiring was part of the fabric of the building. They found that everything else was plant on the grounds that everything but the electric wiring went to create the atmosphere or ambience that it was an important function of the company's particular trade to provide for its customers to resort to and enjoy. They therefore found that the light fittings and decorative items satisfied the functional test required of plant despite the fact that they formed part of the setting within which the trade was carried on.

The Inspector appealed against the Special Commissioners decision. The company accepted the decision that the wiring was not plant. Both the Court of Session and the House of Lords rejected the Inspector's appeal.

In the House of Lords Lord Lowry said " something which becomes part of the premises, instead of merely embellishing them, is not plant, except in the rare case where the premises themselves are plant, like the dry dock in Barclay Curle or the grain silo in Schofield v Hall"CA22050. The items in the Scottish and Newcastle case on which capital allowances had been claimed were part of the setting but they were not part of the premises.

Lord Cameron said " The problem which the Commissioners were called upon to solve was one concerned with a "service industry". I think this factor is important because the question of what is properly to be regarded as plant can only be answered in the context of the particular industry concerned and possibly in light also of the particular circumstances of the individual taxpayer's own trade."

Later on he said " I think that the Commissioners rightly applied their minds to the proper initial and fundamental questions which they had to answer - the meaning of plant in its statutory context and as applicable to the trade carried on by the taxpayer".

Decorative assets are likely to be caught by CAA01/S21 - S22 and not to be plant, except where they fall within item 14 of list C CA22030. This covers decorative assets provided for the enjoyment of the public in hotel, restaurant or similar trades. You should only accept that items of decor are plant if the taxpayer can show that:

- the trade involves the creation of atmosphere/ambience and in effect the sale of that ambience to its customers, **and**
- the items on which plant or machinery allowances are claimed were specially chosen to create the atmosphere that the taxpayer is trying to sell.

For example, a painting on an accountant's office wall that is owned by the accountant is not plant because selling atmosphere is not part of an accountant's business.

CA21135 - PMA: Meaning of plant & machinery: Whether asset is plant is a question of fact

Lord Cameron said in the Scottish and Newcastle case CA21130 "the question of what is properly to be regarded as plant can only be answered in the context of the particular industry concerned and possibly in light also of the particular circumstances of the individual taxpayer's own trade". It is clear from these comments that were made in the House of Lords that the fact that something is plant in one case does not mean that it is plant in another.

For example, a ship used as a floating restaurant that is owned by the proprietor is not plant. However, a ship used by its owner in a trade of shipping is.

It is also clear from Lord Cameron's comments that in general if you take a case about the meaning of plant or machinery to the Commissioners and lose you should not express dissatisfaction. The decision will turn on the facts that the Commissioners have found.

CA21140 - PMA: Meaning of plant & machinery: Wimpy: the current state of the law on the meaning of plant

It was becoming clear that the "setting" test was of limited application in deciding whether an item was plant. For example, the partitions in the John Good case, the window screens in the Leeds Permanent case and items like the tapestries, murals, prints and sculptures in the Scottish and Newcastle case were part of the setting but they qualified for capital allowances as plant.

In the cases of Wimpy International Ltd v Warland, Associated Restaurants Ltd. v Warland 61TC51 Hoffman J set out the limitations of the "setting" test. He said that the contrast between plant and setting was perfectly intelligible in the context of the J Lyons case but that later cases had shown that an item which could be properly be described as being part of the setting could also be plant.

Both Wimpy and Associated Restaurants improved and modernised their restaurants. They claimed plant or machinery allowances on items like replacement shop fronts, floor and wall tiles, murals, lighting, water tanks, staircases and raised floors. The Special Commissioners followed the Scottish and Newcastle decision and allowed things like murals, decorative brickwork and wall panels but disallowed the rest apart from the water tanks. The companies appealed to the High Court and then the Court of Appeal. The Special Commissioners decision was upheld apart from one item - the Wimpy light fittings.

In his judgement Hoffman, J said that there were three tests, all of which can be called functional, to be considered in deciding whether an item was plant. These tests are:

1. is the item stock in trade?
2. is the item the business premises or part of the business premises (the premises test)?
3. is the item used for carrying on the business (the **business use test**)?

The business use test is basically the same as the functional test CA21100.

The fact that an item passes the business use test is not enough to make it plant. If the business use is as stock in trade - that is if the answer to (1) above is yes, the item is not plant. Furthermore, it is not sufficient that the asset is used in the business, it must be employed in carrying on the business. For instance, general lighting failed this test in the Lyons case CA21110 and in Hunt v Henry Quick Ltd. (TCL3328) whereas lighting to create atmosphere and to attract customers was allowed in Wimpy.

Hoffman, J also said that an item used for carrying on the business is not plant if the business use is as the premises (or part of the premises) or place on which the business is conducted - the "premises" test. That is, if the answer to (2) above is yes the item is not plant. He made it clear that it does not matter how purpose-built the premises may be they are not plant because they are the premises.

Hoffman J was not using "part of the premises" here to mean the same as whether the item has become part of the realty for the purposes of the law of real property or a fixture for the purposes of the law of landlord and tenant. He suggested four general factors to be considered in deciding whether an item is part of the premises:

1. does the item appear visually to retain a separate identity?
2. with what degree of permanence has it been attached to the building?
3. to what extent is the structure complete without it?
4. to what extent is it intended to be permanent or alternatively is it likely to be replaced within a short period?

These are questions of fact and degree. They are not absolute hurdles each of which must be surmounted.

CA21150 - PMA: Meaning of plant & machinery: Completeness test

Another test that is sometimes applied in deciding whether an item is plant is the "completeness test". You apply the "completeness test" to an asset in a building by considering whether the building would be complete for the carrying on of the activity that is to be carried on within it without that item. It is the same test as the third of the four general factors Hoffman said should be considered CA21140 in deciding whether an item has become part of the premises.

The "completeness" test was considered by the House of Lords in the case of Cole Brothers Ltd. v Phillips 55TC188. In that case Vinelott, J said that he considered the "completeness" test to be implicit in the J Lyons case where Uthwatt J drew a distinction between lighting which was added to a building which was otherwise complete to be used for its intended purpose and lighting which was needed to make a building complete for its intended purpose. Lighting which was added to an otherwise complete building might be plant; lighting which was needed to make a building complete for its intended purpose was not plant. For example, if there is not enough natural light for the building to be usable the electric lighting that makes the building usable is not plant (but see CA21170).

CA21160 - PMA: Meaning of plant & machinery: Entity or piecemeal approach

You sometimes have to decide whether something like an electrical system should be looked at as a whole (the **entity approach**) or whether you should look at the individual parts of the system separately (the **piecemeal approach**). Usually you should adopt the piecemeal approach. In the case of Attwood v Anduff car wash 69TC575, the taxpayer wanted to adopt an entity approach and claimed that the whole site was a single item of plant. The Special Commissioners accepted this but the High Court and the Court of Appeal found that the piecemeal approach should be adopted.

CA21170 - PMA: Meaning of plant & machinery: Mains services overview

The "completeness test" CA21150 does not let you refuse all claims that electrical installations or cold water, gas or sewerage systems qualify for capital allowances as plant or machinery. In Cole Brothers Ltd. v Phillips 55TC188 Oliver L J said this. " A building may be incomplete without some form of electrical installation but if the occupier installs a system specially adapted for the particular purpose for which he intends to use the building the fact that the building would be incomplete if the electrical system were to be removed does not prevent the electrical system being plant".

The first question you should consider when you get a capital allowance claim on an electrical system or other mains service is whether you should consider the installation as a whole - the entity approach - or whether you should adopt a piecemeal approach and consider the individual parts of the system.

In the case of Cole Brothers Ltd. v Phillips 55TC188 the company claimed that the electrical installation in a new retail store should be treated as a single item of plant. The Inspector adopted a piecemeal approach by looking at the individual components of the electrical installation separately and the Special Commissioners and the Courts took the same line.

CA21180 - PMA: Meaning of plant & machinery: Electrical installations and other mains services

Accept that an electrical system in a building is a single entity of plant if and only if all of the following conditions are satisfied:

- it is specifically designed and built as a whole, that is it is a fully integrated entity;
- it is designed and adapted to meet the particular requirements of the trade;
- the end user items of the electrical installation function as apparatus in the trader's business;
- the electrical installation is essential for the functioning of the business.

If an electrical installation does not satisfy the above conditions adopt a piecemeal approach. You should accept that the following items are plant:

1. the main switchboard, transformer and associated switchgear provided that a substantial part of the electrical installation - both the equipment and the ancillary wiring - qualifies as plant;
2. a standby generator and the emergency lighting and power circuits it services;
3. lighting in sales areas if it is specifically designed to encourage the sale of goods on display;
4. wiring, control panels and other equipment installed specifically to supply equipment that is plant or machinery.

Lighting which is within (c) qualifies even if there is no other lighting. You should treat the public areas in businesses like banks and building societies as sales areas.

Adopt the same approach to cold water, sewerage and gas systems as you do to electrical systems. Most cold water systems etc. should not be looked at as a single entity and you should adopt a piecemeal approach to them. The case of Bridge House v Hinder 47TC182 considered the question of sewers in relation to a restaurant and concluded in that case that they were not apparatus employed in the trade, but rather part of the setting enabling trade to be carried on.

CA21190 - PMA: Meaning of plant & machinery: Lifts, escalators and building alterations

CAA01/S25

Lifts and escalators are machinery. Treat expenditure on the provision of the wiring that operates a lift or escalator as part of the expenditure incurred on the provision of the lift or escalator. This means that it qualifies for PMA.

You may get a claim that expenditure on installing a lift shaft qualifies for capital allowances as expenditure on the provision of plant or machinery. The lift shaft itself is not plant or machinery. However, expenditure on installing a lift shaft in an existing building should qualify under Section 25 as expenditure on alterations to an existing building incidental to the installation of plant or machinery. Expenditure on installing a lift shaft in a new building does not qualify because Section 25 only applies to expenditure on alterations to an existing building.

Treat capital expenditure on alterations to an existing building incidental to the installation of plant or machinery as if it were expenditure on that plant or machinery and as if the alterations were part of the plant or machinery. The legislation is intended

to cover the direct costs of installation, that is those works which are brought about by the installation of the plant and which are associated with it in such a way that their cost can properly be considered to be part of the cost of providing the plant. The use of the word 'incidental' makes it clear that the primary purpose of the work must be the installation of plant or machinery. In the Barclay Curle case (45TC240) Lord Reid said that the section covers the case where 'the exigencies of the trade require that when new machinery or plant is installed in the existing buildings more shall be done than mere installation in order to ensure that the new machinery or plant may serve its proper purpose'. You should look for a direct link between the incurring of the expenditure and the installation of the plant said to have given rise to that expenditure.

Expenditure on alterations only qualifies if there is a direct link between the incurring of expenditure on alterations and the plant or machinery said to have given rise to that expenditure. There are no plant or machinery allowances for expenditure on additions to a building but only for alterations to an existing building. The main purpose of the alterations must be the installation of plant or machinery. Work done for some other purpose such as the better operation of the asset does not qualify. When you are trying to decide whether expenditure on alterations qualifies under Section 25 as expenditure on alterations incidental to the installation of plant or machinery you should think about what would happen if the plant were removed. Would the 'installation' work remain as part of the building or would it be eradicated or abandoned?

Plant is sometimes moved from one site to another. If the costs of removal and re-erection are not allowable as a deduction in computing profits you should treat those costs as expenditure on plant and machinery and give capital allowances on them.

CA21200 - PMA: Meaning of plant & machinery: Miscellaneous items that are plant

Accept that these items are plant:

- central heating systems*,
- hot water systems*,
- air conditioning systems*,
- alarm and sprinkler systems,
- ventilation systems*,
- baths,
- wash basins,
- toilet suites.

*** Please note** - that with effect from 1 April 2008 (CT) and 6 April 2008 (IT) expenditure on these items is separately classified as expenditure on an 'integral feature' of a building or structure CA22300, and as such falls to be treated as 'special rate' P&M expenditure, entitled to WDAs at the rate of 10% p.a. in the special rate pool.

In general, fixtures and fittings are plant if they are of a permanent and durable nature, that is if they satisfy the 2-year test CA21100, and they were bought for the purposes of the trade. Treat furniture including carpets, curtains and linoleum and items like cutlery, crockery, glassware, linen, kitchen utensils and protective clothing in the same way.

A door handle would normally be an integral part of the door to which it is affixed, with the result that it would not qualify for PMAs. Any subsequent replacement of the door handle would then count as a repair of the door. However you should not in practice refuse a PMA claim where this is the treatment adopted in the computations. Some mechanical handles can in any event constitute machines in their own right. If you accept a PMA claim you should deal with any subsequent replacement through the pool of qualifying expenditure in the usual way.

If the taxpayer's trade involves the creation of an attractive setting or atmosphere and the sale of that setting or atmosphere to their customers, pictures and removable wall decorations specially chosen to help create that setting or atmosphere will be plant CA21130. Other pictures and removable wall decorations are not plant. They will not be apparatus with which the taxpayer carries on the trade.

If you receive a capital allowance claim for an underground cable system (including television, telecommunications, or electricity supply systems) the costs of installing the cables will include the costs of excavating the land and providing ducting that houses the cables. The cabling and the ducting may be recognised as separate components of the asset in the claimant's accounts (so that they are depreciated at different rates). Where the ducting is installed as a direct incident of the installation of the cabling, the costs of the ducting and the associated excavation are, for capital allowance purposes, part of the costs incurred on the provision of the cabling regardless of the treatment in the accounts. In these circumstances, if the cabling is not itself a long-life asset, the long-life asset rules are not separately applicable to the ducting.

In television hire businesses television sets that are hired out are plant or machinery.

You may have to deal with a business that both hires out television sets and sells them. If so, the television sets which are hired out will be plant if the hiring is a separate and distinct business activity and the stock of sets for hiring out is separate from the stock of sets for sale. If the trader takes sets to hire out from his general trading stock you should follow the guidance at CA11530 about assets appropriated from trading stock.

Treat assets like video recorders as you treat television sets.

CA21230 - PMA: Meaning of plant & machinery: Football ground improvements

Football clubs may incur expenditure on ground improvements in order to implement the recommendations of the Taylor report. The Inland Revenue had discussions with the Football League about what expenditure is likely to qualify for capital allowances. Following those discussions the Inland Revenue sent the Football League a letter on 25 January 1991 indicating what expenditure is likely to qualify. The letter listed as an appendix the sort of assets used by a football club in its trade that would normally qualify as plant or machinery. This is the list:

1 Advertising hoardings and perimeter boards which are not simply part of a perimeter fence or other structure
2 Air conditioning plant, fans and ventilation machinery
3 Automatic exit doors and gates
4 Bicycle holders
5 Cameras, televisions, video recorders
6 Cars, coaches and vans
7 Computers, printers, photocopiers, typewriters and cash registers
8 Cookers, fridges, freezers, microwaves, dishwashing machines
9 Crush barriers securely fixed to the ground are not plant or machinery but they may come within the 1975 safety legislation and so qualify under CAA01/S32 CA22240
10 Electric scoreboards and visual displays
11 Fencing is not plant or machinery but it may come within the 1975 safety legislation and so qualify under CAA01/S32 CA22240
12 Fire alarm systems, fire extinguishers, sprinkler systems
13 Floodlighting
14 Floor coverings that are not part of the building or structure; for example, carpets (but not tiles which are stuck down)
15 Goalposts and certain movable training equipment of a capital nature, for example, a vaulting horse (but not equipment which is part of the premises)
16 Heating installations, boilers and water heaters
17 Lifts and hoists
18 Public address equipment - microphones, amplifiers and loudspeakers
19 Racking, shelving, cupboards and furniture

20 Telephones and telephone equipment, for example, private exchanges.
21 Toilet sanitary ware, sinks and basins, baths and showers whether for staff or public (but not the mains water supply)
22 Turnstiles and spectator counting equipment

The letter gave some guidance on seats. It said that most modern types of seats are likely to qualify as plant or machinery, both plain plastic tip-up seats and more luxurious types of seat. It makes it clear that seating which is no more than an integral part of the stand will not qualify.

It says that the incidental costs of installing seats, or any other type of plant or machinery, may qualify under CAA01/S25 CA21190. It says that expenditure will not qualify as incidental if it creates an essentially new asset such as a stand or a terrace with an entirely new rake. It also says that we would not expect expenditure to qualify as incidental if it is large in proportion to the cost of the plant or machinery being installed.

Remember that not all expenditure incurred by clubs to comply with the requirements of the Football Spectators Act 1989 will qualify for capital allowances. The normal rules will apply.

The letter states that expenditure on the fabric of a police control box will not qualify for capital allowances. We have now been advised that some local authorities take the view that they have the power under the Safety at Sports Grounds Act 1975 to require police control rooms to be installed. If that happens the expenditure will qualify under CAA01/S32 CA22240.

CA21260 - PMA: Meaning of plant and machinery: All-weather and artificial surfaces

If you get a claim that an all weather surface such as an artificial sports pitch or an all weather gallop qualifies for PMAs you should find out all the facts. In deciding whether to accept or refuse the claim you will need to decide whether the surface is an asset with which the business is carried on or if it is part of the premises or setting in or on which it is carried on.

There are two cases that involve all weather surfaces, Shove v Lingfield Park 1991 Limited TCL3725, TCR15/04, and Anchor International Limited v IRC TCL3751. In the Lingfield Park case the surface was held not to be plant while in the Anchor case it was. In both cases the method of construction was similar, though the top surfaces differed.

In the Lingfield Park case the company put down an all-weather racetrack and claimed that the expenditure qualified for PMAs. In the High Court the judge said that it was difficult to see the function of the track as being other than as part of the premises. An asset did not lose its character as part of the premises because it was separately identifiable and of different construction. The Court of Appeal upheld the High Court's decision that the track was not plant confirming that the effect of the track was "to enlarge the area of the racecourse space available to Lingfield to function as premises". The decision also shows that premises are not limited to buildings that offer shelter.

In the Anchor case the company provided sporting facilities and incurred expenditure on the installation of five-a-side football pitches, which consisted of a sand-filled synthetic grass carpet on a stone pitch base. This synthetic football pitch was claimed to be plant. Unlike Lingfield the period under appeal fell after the introduction of what is now sections CAA01/S21 - S23 and the question of whether the expenditure was on a structure was considered. The Special Commissioner who heard the appeal against the refusal of capital allowances decided that the carpet had an identity of its own and was not a structure. The carpet could be regarded as both the setting for the business and the means by which that business was carried on. As it was a means of generating profit, it was to be regarded as plant. The Court of Session found for the company. It was decided that the Special Commissioner was entitled to consider the carpet as a separate entity and that there was evidence to support that conclusion. On the second point the court confirmed the view taken by the Special Commissioner that the carpet was the means by which the company generated profits and not merely the setting. They held that the facts of the case were distinct from those in Shove v Lingfield Park (1991) Ltd. The contradictory judgements do not provide clarity as to how such surfaces are to be regarded. As Lord Lowry said in Inland Revenue v Scottish & Newcastle Breweries Ltd 55TC252, there are cases that on the facts found are capable of decision either way.

In Anchor, the Court of Sessions considered it of great importance to consider the function, which the asset performs in the business activity. In Benson v The Yard Arm Club Ltd. 53TC67 a ship moored on the Thames and used as a floating restaurant was held to be premises. If it had been put to use carrying passengers on river cruises it would have been regarded as apparatus of the trade. In Anchor the trade was the provision of synthetic football pitches, whereas the trade of Lingfield was the provision of leisure services including both grass and artificial track racing.

One thing that you should remember when you are considering your case is that the fact that an asset is a means of generating profit does not necessarily mean that it is plant. The business premises are a means of generating profit but they are not plant. For example, the classrooms, car parks, playgrounds, playing fields of a school are part of the means of generating profit and are all part of the premises. Just as the all weather

track and the grass track in Lingfield Park were part of the premises an artificial pitch and grass playing fields would be part of the premises of the school.

If you have a case where PMAs are claimed on an all-weather surface you may find that the other side says that the Anchor case supports the claim. The Anchor case was decided on its own particular facts as presented to the Special Commissioner and does not determine the matter for any other case, unless the facts are identical. You should apply the premises test set out by Hoffman, J in the Wimpy case CA21140. This is how Hoffman, J set out the premises test. He said that an item used for carrying on the business is not plant if the business use is as the premises (or part of the premises) or place on which the business is conducted - the 'premises' test. In Lingfield Park the Court of Appeal held that the surface was not apparatus with which the business was carried on but was part of the setting or premises in which the business was carried on. It failed the premises test and was not plant.

In most cases an artificial pitch or surface will be part of the setting in which the trade or other Sch A business is carried on. In the Wimpy case Hoffman J said "even if an embellishment for the purpose of trade passes the business use test, it still has to pass the premises test and something that becomes 'part of the premises' fails that test unless the premises are themselves plant". In Anchor it was found that the asset was the carpet which was not part of the premises, but rather an adjunct of the business. In Benson, Shaw LJ said "a characteristic of plant appears to be that it is an adjunct to the carrying on of the business and not the essential site or core of the business itself". Whereas in Lingfield Park the asset was the track and the integral works which formed part of the essential site.

If you cannot reach agreement with the other side so that the case has to be decided by the Commissioners, the facts found by the Commissioners will be all-important. It is also important to establish the whether the asset is simply the surface material or whether it includes the works underneath. Usually the surface and the substructure are inextricably interlinked.

You must challenge any evidence put forward by the other side with which you do not agree because if you do not challenge it the Commissioners will have to accept it and base their decision on it. If the other side try to attribute a function to the surface you should point out to the Commissioners that every trading asset plays some part in the business and the mere attribution to it of a function does not automatically convert it into plant. The question is what it functions as. If it functions simply as premises or setting it is not plant. In that case it fails the premises test (see above).

The End

This information has been provided by HMRC.

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