



## Capital Allowances Advice for Buyers and Sellers

More often than not when a property is sold, the vendor, having made a claim for capital allowances, will ask the purchaser to enter into a Joint Election under the provisions of Section 198 of the Capital Allowances Act 2001.

Whilst a Section 198 Election is advantageous to the vendor, in as much as it guarantees his disposal value with the Inland Revenue and limits his exposure to a tax clawback, it will at the same time effectively restrict the purchaser's entitlement to capital allowances, to the disposal value of plant and machinery brought into account by the vendor.

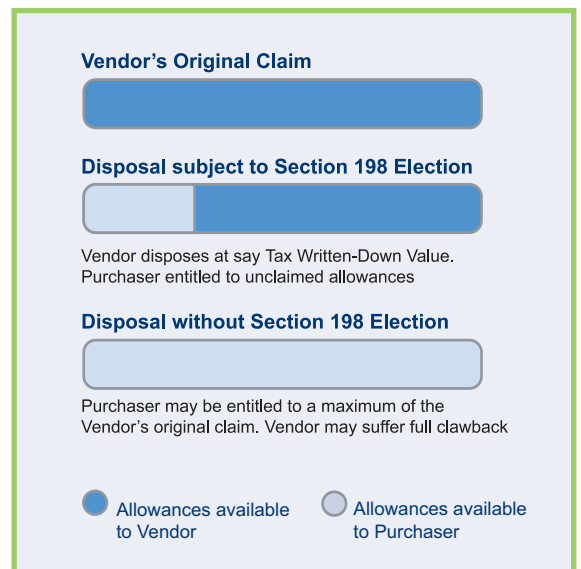
Not all facts surrounding Section 198 Elections are always clear, and whilst the elected figure is binding on both parties to the contract as well as the Inland Revenue, it is important to understand a few facts about elections and their effect on the purchaser's taxable position.

### Important points to note

- There is no legal requirement to agree a disposal value at the tax written-down value. Whilst this may be of benefit to the vendor's taxable position, it will be a disadvantage to the purchaser. The higher the disposal value, the greater the capital allowances to the purchaser. There is no reason why a disposal value should not be negotiable under the right circumstances.
- Where the vendor has a lower tax rate than the purchaser, there is the facility for the purchaser to negotiate a more advantageous disposal value, by meeting the vendor's clawback.
- A Section 198 Election should always be accompanied by a detailed schedule of plant and machinery. As this is a requirement of the Act, a schedule should always be obtained setting out the disposal value for each asset to identify the restriction.
- Section 198 Elections only restrict the purchaser to the disposal value of the plant and machinery on which a claim has been made. If the vendor's claim omits specific items of identifiable plant, these may be claimed by the purchaser at their full apportioned cost, as an 'overage' on the elected Section 198 plant value.

- A vendor may advise his purchaser that no capital allowances are available and does not offer a Section 198 Election. This may be because he was restricted and was unable to claim due to the previous vendor having made a claim and disposed of the plant at a very low figure. However, if this vendor acquired the property prior to 24th July 1996, the current purchaser may still be entitled to a full unrestricted claim.
- A joint election signed by the seller and buyer must be entered into within 2 years of the date of the Contract of Sale. If this is not done, the Inspector of Taxes is under no obligation to accept a disposal value (irrespective of the Contract or the intention of the parties). In such a case he will probably refer the matter to the Valuation Officer to prepare an apportionment of the purchase price in accordance with CAA 2001 Sections 562, 563 and 564(1).

This is likely to result in a disposal value significantly greater than the tax written-down value and probably more than the seller's own capital allowances claim. As a disposal value can not exceed the capital allowances claimed by the seller, the seller could be subject to a maximum clawback and thus lose the allowances he had previously claimed.



Indicative diagram demonstrating the potential effect of a purchaser's restricted capital allowances claim.

For further information or a capital allowances assessment without obligation

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### The Purchaser's Checklist

In many cases purchaser's of property miss out or lose potential tax relief because the subject of Capital Allowances is not raised at the right time. The following points should therefore be considered prior to exchange of contracts:-

To be checked	Reason
Always seek professional advice on capital allowances before a property is purchased to obtain an estimated figure.	This should assist in maximising an investor's capital allowances entitlement and could affect the viability of the investment.
Has the vendor made a claim for capital allowances?	This will establish whether the purchaser's claim will be restricted.
If the vendor has not claimed capital allowances, when did he acquire the property and from whom?	This will also establish whether the purchaser's claim will be restricted.
If the vendor has claimed capital allowances, what disposal value will he be bringing into account and does he intend to enter into a Section 198 Election?	The disposal value could be negotiable and will dictate the level of capital allowances to which the purchaser will be restricted.
If the vendor has claimed capital allowances, is his tax rate lower than the purchaser's tax rate?	There may be scope for the purchaser to negotiate a higher disposal value and thus increase his capital allowances entitlement by using the arbitrage between the tax rates.
If the purchase price of the property is negotiable, ensure the capital allowances position is established first.	It may be difficult to negotiate a disposal value after a purchase price has been agreed and contracts exchanged.
From a purchaser's perspective the Contract should remain silent on capital allowances.	A silent Contract will not unnecessarily tie the purchaser to a non-negotiable disposal value.
Ensure that any disposal value to be inserted into a Section 198 Election is first checked by a professional.	This will ascertain whether the disposal value is fair and reasonable.
Every Section 198 Election should be accompanied by a detailed breakdown of assets on which capital allowances have been claimed showing a disposal value for each.	This will show whether or not the vendor has made a comprehensive claim and if there is scope for an enhanced claim on any qualifying assets not previously claimed.

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The information contained in the DATASHEET is believed to be correct, but there may be errors or omissions for which PJB cannot be responsible. It is therefore essential to take advice on specific issues.