



Wear and Tear Allowances Claims - Recoupment

Recoupment of Allowances

Upon disposal of a property the Income Tax Act No.58 of 1962 section 8 (4) requires that where an asset is sold for a figure in excess of its tax value, wear and tear allowances previously claimed are to be recouped. The recoupment will equal the sale price less the tax value, however the recoupment cannot exceed the value of the deductions previously claimed.

Apportionment of Sale Price

Case law suggests that the sale of land and buildings are the sale of one asset, and therefore if a property is sold at a price exceeding the seller's purchase price, any allowances previously given will be fully recouped. Additionally, apportionments made to reduce potential recoupment of allowances are not justified, unless such apportionment is stated in a contract of sale and agreed by both parties.

From a tax perspective, it is therefore beneficial for the seller to apportion the purchase price within the sale agreement to the relevant asset classes. The revenue authorities, without such an apportionment are entitled to apply a reasonable value to the assets sold in determining the recoupment.

In order to suffer no recoupment the sale agreement should therefore apportion the purchase price as follows:-

- Fixed assets within the property qualifying for wear & tear allowances. The sale price is to equal the tax written down value (the disposal value)
- Land & buildings (excluding machinery, plant, etc as above) is to equal the remainder of the purchase price

From a tax paying purchaser's perspective the apportionment to qualifying fixed assets should be as high as possible, as they will be entitled to allowances on that portion. It is therefore important during the negotiation process to identify whether a claim has been made, and which of the parties are likely to gain the most benefit from the available allowances.

Important Points to Note

1. There is no legal requirement to agree a disposal value at the tax written-down value. Whilst this may be of benefit to the seller'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.
2. Where the seller 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 seller's recoupment.
3. An apportionment in the purchase contract will only restrict the purchaser to the disposal value of the qualifying assets on which a claim has been made. If the seller's claim omits specific items of identifiable plant and machinery, these may be claimed by the purchaser at their full apportioned cost.
4. Where no contract apportionment exists, the seller will most probably suffer full recoupment, but the purchaser will be free to pursue a full apportionment claim.
5. Prior to disposal of any properties, it is suggested that you contact PJB in order that the recoupment provisions of the Income Tax Act are addressed, and potential recoupment is kept to a minimum.

For further information or a capital allowances assessment without obligation

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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.