



Dwelling house definitions – The final word?

The release by HM Revenue & Customs (HMRC) of Revenue & Customs (R&C) Brief 45/10 on 22 October 2010 clarifies HMRC's view in relation to the availability of capital allowances within dwelling houses that has been the subject of much uncertainty for almost two years since the publication of R&C Brief 66/08 on 29 December 2008.

Background

Prior to the release of R&C Brief 66/08, the situation was pretty simple. Plant and machinery allowances could not be claimed in "dwelling houses" (s35 Capital Allowances Act 2001(CAA2001)) and although there was no definition of a dwelling house within the capital allowances legislation, apart from the Rent Act 1977 reference in relation to Assured Tenancy Allowances, everybody knew what a dwelling house was and this was further backed up by the guidance issued by HMRC in their Capital Allowances manuals.

However, R&C Brief 66/08 changed this as HMRC sought to clarify their position to the application of s35 CAA2001 to university halls of residence and similar facilities, which resulted in the interpretation that the communal areas of other types of multiple occupancy accommodation were not part of the "dwelling house" and so plant and machinery allowances could be available on capital expenditure incurred in these areas. Given this interpretation, it soon followed that tax relief was being claimed by those with Houses in Multiple Occupation (HMO) properties and although HMRC did not intend this, the interpretation was out there and being relied upon.

R&C Brief 45/10

This Brief now, from the HMRC viewpoint, seeks to remove the area of uncertainty around the "dwelling house" definition to provide clarity for taxpayers going forward and the HMRC manuals are to be updated to reflect this new view.

After seeking further legal advice, HMRC has decided the definition of a dwelling house for all capital allowances purposes apart from Assured Tenancy Allowances, will take its "ordinary, everyday meaning" which it has derived from the case of

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Gravesham Borough Council v Secretary of State for the Environment (1982) 47 P&CR 142. Here it was held that a dwelling house was characterised by its ability to afford to those who use it, the facilities required for day-to-day private domestic existence. Therefore, for student and other accommodation which consist of either cluster flats or HMOs, the communal areas (kitchen/dining rooms, bathrooms and lounge/TV rooms etc.) will now be regarded as part of the dwelling house as the individual rooms on their own would not provide the occupants with the facilities for that day-to-day existence and hence plant and machinery allowances will not be available. However, the common parts of such properties (entrance lobby, stairs or lifts) would not be part of the dwelling house and so plant and machinery allowances would continue to be available on capital expenditure on qualifying assets within these areas.

Impact on claims

This view will apply to all capital expenditure incurred on or after 22 October 2010 so no allowances will be available going forward.

For capital expenditure incurred on or after 29 December 2008 but before 22 October 2010, HMRC will accept capital allowances claims based on either the view set out in R&C Brief 66/08 or that in the Capital Allowances manuals within the normal self assessment timeframe.

For capital expenditure incurred before 29 December 2008, claims made for open years and filed before 22 October 2010 which rely on R&C Brief 66/08 will also be accepted.

If you have any queries on the application of this note or would like further advice please contact:

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