



UPDATE OF HMRC CAPITAL ALLOWANCES GUIDANCE

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ICAEW welcomes the opportunity to provide written comments relating to HMRC's update of its capital allowances guidance.

This response of 9 October 2024 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. We appreciated the opportunity to attend HMRC and HM Treasury’s roundtable event on 19 September 2024. At that roundtable, HMRC set out seven areas of the capital allowances regime where it believes that HMRC’s guidance could be updated to reduce uncertainty:
 1. Meaning of plant
 2. Scope of “on the provision of”
 3. “Entity” or “piecemeal” approach
 4. Treatment of software
 5. Whether expenditure is capital or revenue
 6. Whether expenditure is main rate or special rate
 7. Interactions between different allowances (e.g. the AIA and Full Expensing)

We have set out some initial thoughts in relation to some of these areas below.

2. As an overarching point, we believe that it would be helpful if HMRC’s guidance reflects recent case law, wherever possible. Ideally, once a new case is decided, HMRC should consider how the decision affects its guidance and make adjustments accordingly. For example, HMRC may wish to update [CA20060](#) to reflect the UTT’s decision in [Gunfleet Sands Ltd and others v Revenue and Customs Commissioners \[2024\] STC 177](#) on what constitutes expenditure “on the provision of plant”.
3. Guidance should also keep pace with changes to other parts of the tax code. For example, [CA21210](#) which deals with customer lists has largely been redundant since the introduction of the intangible fixed asset rules in 2002.
4. Similarly, guidance should ideally be reviewed on a regular basis to ensure that it keeps pace with technological developments. For example, in the context of plant v setting, carpet tiles are now generally “tackified” so they can be pulled up and stuck back down elsewhere whereas they were previously generally permanently glued down. This allows access to under-floor technology such as heating and wiring and hence makes these tiles plant.

ANSWERS TO SPECIFIC QUESTIONS

Entity/piecemeal approach

5. Sections such as [CA21160](#) et al need to be updated to reflect the position since April 2008 with the introduction of the integral features rules. The guidance at present suggests that any form of electrical system would constitute an integral feature, which isn’t necessary the case.
6. For example, electrical systems that connect buildings (eg cabling to an out of the way new building, such as a new windfarm or farmland converted to an industrial estate) is plant if it is necessary for the installation of specific plant in working order. In the same way, where a large raisable ramp, for example, is used to lift trucks etc up so that the underside can be worked on, the wiring of the ramp is part of that plant, not the building.

Software

7. This is another area where HMRC guidance has failed to keep pace with technology and changes in the tax code. The guidance needs to mention that the default position for companies is that computer software is treated as an intangible fixed asset (if it meets the relevant conditions) unless the company elects into the capital allowances rules.
8. The examples given in [CA23410](#) are also extremely out of date. It would be useful if the guidance could cover more up-to-date technologies such as cloud computing costs and online software subscriptions.

Capital v Revenue

9. One of the most problematic situations in determining this distinction is where the purpose for which a building has been purchased is unclear (eg whether to develop and sell it as stock-in-trade or hold it to rent out). The former is generally considered to be trading whereas the latter is capital. Where the intention of the business is unclear, buildings will generally be treated as fixed assets by default so that any gain arising on a deemed change in use can be held over. However, that means that any upfront capital allowances claims made in respect of commercial property fit-outs, for example, need to be reversed retrospectively. Perhaps some further guidance on this could be included on these kinds of situations at [CA20020](#).

“On the provision of”

10. In addition to the general points we have raised in this area, it would be useful if HMRC provided guidance on specific areas of contention. For example, if a business plants a row of mature trees in order to get planning permission for a factory, is that part of the factory cost? What about if the business makes a s106 (Town & Country Act 1990) payment as part of a development? We understand that it is not possible to provide guidance on every potential expense that might arise, but more guidance on the eligibility of costs arising from establishing the setting of the asset would be useful.

Comparisons between first year allowances

11. One of the areas that our members often find confusing is the differences between which types of expenditure are eligible for or excluded from the various first year allowances regimes, such as the annual investment allowance and full expensing.
12. Thankfully, I have drawn up a table copied below which I refer to when I am considering these various allowances. It might be useful if something similar were included in the capital allowances manual.
13. A question that also comes up regularly is whether there is an order of preference in claiming the various forms of first year allowance on a particular item of expenditure. While this is always a choice for the taxpayer (provided it is one that the law allows) some commentary could be included in the manual around this.

	AIA (£1m)	Full expensing*	50% allowance*
General P&M	Yes	Yes	
Second-hand assets	Yes		
Assets acquired by way of gift			
Assets acquired for leasing	Yes		
Cars			
Integral features	Yes		Yes
Long life assets	Yes		Yes

*Companies only

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).