C23 Clothing

In most cases, it will not be possible to claim allowances for clothing costs. If costs are incurred by employees directly, relief will be due only if the clothing is "necessarily provided" for use in the performance of the employment duties.

The definition of "necessarily provided" is notoriously tight and was tested in the *Williams* case, where a television newsreader was denied plant and machinery allowances for clothing she wore when presenting. The tribunal held that the clothing in question presented "no special feature either in construction, purpose or position". Principles from the earlier *Hillyer v Leeke* case were applied. Broadly, the requirement to use the item in question must be imposed by the nature of the employee's duties, and not by the personal circumstances of the employee.

HMRC guidance in relation to this "necessarily" condition is covered more fully under **Employee expenses**.

If allowances are due, an adjustment will be required (on a "just and reasonable basis") if the item in question is used partly for private purposes. The "wholly and exclusively" principle that applies to general employee expenses does not apply for capital allowances.

HMRC do appear to accept that protective clothing may qualify for plant and machinery allowances:

> "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 ... 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."

Law: CAA 2001, s. 36(1), 205*ff*.
Cases: *Hillyer v Leeke* (1976) 51 TC 90; *Williams v HMRC* [2010] UKFTT 86 (TC)
Guidance: CA 21200; EIM 36560

C24 Cold rooms and cold stores

A clear factual analysis will be required in order to determine whether plant and machinery allowances can be claimed on a cold room or cold store.

It is likely that these items will initially be caught as buildings or parts of buildings. However, the statutory bar on allowances is overruled by item 4 of list C (which includes "storage equipment (including cold rooms)") and item 18 (which refers simply to "cold stores"). Normal principles and case law precedents must therefore be applied.

Plant and machinery allowances will be available, subject to an important distinction made by HMRC as follows:

> "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."

But:

> "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".

Those HMRC distinctions predate the FTT case of *Griffiths*, which concerned a storage facility for potatoes destined to be made into crisps. Having already decided that the storage facility amounted to a silo provided for temporary storage (and was thus within item 28 at list C – see **G9**), the tribunal did not in fact need to determine whether it was also a cold store (within item 18). Nevertheless, it decided to do so "for completeness".

HMRC argued in *Griffiths* that the potato store did not meet the requisite criteria to be a cold store:

- It was not "objectively cold".
- To qualify as a cold store did not require the temperature to be lower than the outside temperature at all times, but if the temperature was not usually kept below the ambient

temperature then the building was not functioning as a cold store.

- Here, the premises amounted not to a cold store but rather to a building or structure in which the internal temperature could be kept reasonably constant during certain periods.
- The potatoes were stored at a relatively constant temperature, rather than at an objectively cold temperature.
- The premises did not constitute a refrigerating chamber; no artificial colling took place at the store, which simply took in air at ambient temperature.

The FTT rejected these arguments, finding instead that:

- The potato store operated as a cold store within item 18 of list C.
- The potatoes had to be stored between 6.5 and 11.5 degrees (depending on the variety), and this was sufficiently cold.
- The potatoes were cooled on being put into storage, primarily by the operation of the walls functioning as radiators dispersing the heat and by air being blown through the crop.
- The purpose of the store was to maintain the ideal temperature to store the potatoes and to preserve their condition.
- It was not necessary for the store to be mechanically refrigerated. The walls extracted heat by performing as a radiator.
- The HMRC argument that the store could not function as a cold store in other parts of the world was irrelevant.

Each case will turn on its own merits. Cold rooms will in principle qualify for **Structures and buildings allowances** if plant and machinery allowances are not available.

Law: CAA 2001, s. 23 (list C, items 4, 18)

Case: *JRO Griffiths Ltd v HMRC* [2021] UKFTT 257 (TC)

Guidance: CA 22120

C25 Combined heat and power

Where power is generated, heat may be given off in the process and the heat will typically be wasted. Combined heat and power systems generate heat and power (normally electricity) in a single process, thus cutting down on the waste.

Such equipment will qualify for plant and machinery allowances in all normal circumstances. In some cases, the costs formerly attracted 100% first-year allowances under the scheme for **Enhanced capital allowances** (ECAs), though these enhanced allowances are not available for expenditure incurred from 1 or 6 April 2020 (for corporation tax and income tax respectively).

Combined heat and power systems also attract a more favourable treatment under the climate change levy rules.

C26 Commercial property standard enquiries

When property is being bought and sold the buyer's solicitors will normally ask the other side to complete these enquiries (CPSEs). The enquiries cover much more than just capital allowances but the final section (section 32) of the form (as periodically updated) deals with capital allowances. These relate mainly to plant and machinery, but also ask certain basic questions in relation to **Structures and buildings allowances** (SBAs).

The CPSEs certainly act as an aid to eliciting the correct information, but should not be viewed as a checklist of all the questions it is necessary to ask the vendor at the time of sale. More often than not, it will be necessary to ask additional questions at the outset, or follow-up questions once the replies to the CPSEs have been received.

The wording of the CPSEs is in some respects poor (though it has improved in recent years) and cannot necessarily be relied upon to produce safe answers on which the purchaser can rely. The problems are considered in depth in the accompanying volume to this book, *Capital Allowances* – written by the same authors and also available from Claritax Books.