## 4.2 Buildings, structures and land

### *4.2.1 Introduction*

The area of plant and machinery in buildings is an important one. Often poorly understood in practice, the topic needs to be tackled head on as substantial amounts of tax are invariably at stake. Changes introduced from April 2012, albeit subject to transitional rules that applied until April 2014, have further added to the need to grasp the relevant concepts.

The plant and machinery legislation contains two Chapters that are particularly important for understanding the relationship between buildings on the one hand and plant and machinery on the other.

Chapter 3 (of Part 2 of CAA 2001) deals specifically with "Buildings, structures and land" and is considered in this section **4.2**.

There is then a need for a second tier of legislation, dealing with the problems that arise in relation to ownership. This may be, for example, because a tenant installs plant and machinery in a building that belongs to the landlord: complications need to be addressed as to who, if anyone, is then entitled to claim allowances. These rules are found in Chapter 14 of the legislation ("Fixtures") and are dealt with at **Chapters 10 to 14** below.

In a sense, the headings used in the legislation are unhelpful, for Chapter 3 is in reality also concerned primarily with fixtures.

### *4.2.2 Buildings*

The relevant legislation begins with the bald statement that "expenditure on the provision of plant or machinery does not include expenditure on the provision of a building". For clarity, it goes on to state that "the provision of a building includes its construction or acquisition".

Without further statutory provisions, no allowances could be given for assets that form part of a building. Quite specifically, there could be no allowances for fixtures, as that term is for capital allowances purposes defined to mean "plant or machinery that is so installed or otherwise fixed in or to a building or other description of land as to become, in law, part of that building or other land".

Matters are in fact made worse, as the term "building" is then defined to include any asset that:

a. is incorporated in the building,
b. although not incorporated in the building (whether because the asset is moveable or for any other reason), is in the building and is of a kind normally incorporated in a building, or
c. is in, or connected with, the building and is in list A.

For a discussion of the term "incorporated in the building" (and of "normally incorporated in the building") reference may usefully be made, albeit in a different tax context, to the *Taylor Wimpey* case heard in the Upper Tribunal in 2017. The case makes the point that " 'incorporates' is not the same as 'installed as fixtures' ".

### *List A – assets treated as buildings*

List A reads as follows:

1. Walls, floors, ceilings, doors, gates, shutters, windows and stairs.
2. Mains services, and systems, for water, electricity and gas.
3. Waste disposal systems.
4 Sewerage and drainage systems.
5. Shafts or other structures in which lifts, hoists, escalators and moving walkways are installed.
6. Fire safety systems.

### *Exceptions*

If that were the end of the matter, there could be no plant and machinery allowances for any such items. In fact, however, these provisions are all subject to the all-important rules to be found at s. 23 (see **4.2.5** below).

As regards building alterations incidental to the installation of plant and machinery (s. 25), see **4.4**.

The restrictions in s. 21 do not apply to expenditure incurred before 30 November 1993 (or in some cases 6 April 1996), a point that

could still be relevant today in relation to historic claims (Sch. 3, para. 13).

**Law:** CAA 2001, s. 21
**Case:** *Taylor Wimpey plc v HMRC* [2017] UKUT 34 (TCC)