

# Capital pods

**Julie Butler** and **Libby James** review the First-tier Tribunal decision that found basic camping pods could qualify for capital allowances.

**W**ith a lot of farm diversification focusing on UK tourism and education, a recent tax tribunal has provided welcome tax news for farmers and their advisers.

In *Acorn Venture Ltd* (TC9006), the First-tier Tribunal (FTT) found that the basic camping pods provided to school children for residential adventure holidays qualified for plant and machinery capital allowances. However, the pods for teachers with greater facilities did not qualify for capital allowances.

Pods and other moveable camping facilities are used by many farmers throughout the UK as an additional source of income so this case will prove useful to many planning or involved in similar ventures.

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## The facts

The facts were that Acorn Venture Ltd (AVL) was a tour operator, providing residential adventure holidays for schoolchildren. In the period ended 30 September 2015, AVL purchased 26 pre-constructed ‘camping pods’ in respect of which it claimed the annual investment allowance (AIA). These pods replaced existing portakabins on a site in south Wales. Twenty of them were for use by children and were

### Key points

- A business bought 26 pre-constructed ‘camping pods’ in respect of which it claimed the annual investment allowance.
- The First-tier Tribunal agreed the ‘basic pods’ qualified for allowances because they were not fixed. The ‘luxury pods’ were fixed and did not qualify.
- If the taxpayer had intended to move the luxury pods, they might have qualified under CAA 2001, s 23 list C item 21.
- The set-up costs of diversification projects must be factored in as well as the planning permission, cashflow and budgets.



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known as ‘basic pods’. The remaining six were known as ‘teacher pods’ for use by the accompanying adults.

Following an enquiry, HMRC issued a closure notice in August 2022 reducing AVL’s capital allowance claim on the camping pods by £286,000. This was a significant claim for capital allowances and AVL understandably appealed to the FTT. Setting up any farm diversification project can have a large outlay and achieving tax relief is key to cashflow and both short and long-term profitability.

## Basic versus luxury pods

The camping pods looked like upturned boats with windows, lockable doors and solid walls and roof. The pods benefited from an electric hookup, much like the standard type for a mobile or static caravan, providing lighting to each pod. Each pod was sited on a pre-existing hardstanding area and sat on a wooden frame attached to breeze blocks cemented to the ground. While the pods were anchored to prevent movement, they were not fixed.

Although the pods were the same externally, the basic pods had five beds and the teacher pods only had two. These beds were of a timber construction, built into the pod. Furthermore, the teacher pods had flushing toilets, washing facilities and a small kitchen area, with a permanent foul water drain to which the pod was attached. The operation was in a national park (BBNPA – Brecon Beacons National Park Authority) so legal fees and planning permission were involved in the claim for capital allowances.

## The tribunal understanding

The FTT stated that the pods were structures, but the children’s – the basic pods – were not fixed. They were heavy, but rested under their own weight on concrete block and beams and were anchored only for safety. The teachers’ pods were, however, fixed because the plumbing facilities required access to the underground drain which resulted in there being a degree of permanence. The tribunal considered this amounted to fixing within the ordinary meaning of the word.

The tribunal agreed with AVL that the basic pods lacked sufficient substance to be considered buildings. The BBNPA view expressed in policy 46 was that the basic pods were non-permanent accommodation akin to the tents in which the children otherwise sleep. They were not quite interchangeable but served the same purpose of giving the outdoor adventure experience.

The basic pods were not fixed to the ground and did not have the appearance of a conventional building. They therefore did not provide living accommodation, but instead rather a crude place to sleep with a degree of shelter offering little more than that of a tent.

As the basic pods were not buildings, allowances were not precluded by CAA 2001, s 21 and the appeal was allowed in relation to them. This is a significant consideration for farmers using such camping pods and can help as a guide when making capital allowance claims.

Conversely, the tribunal considered that the teacher pods did not qualify for capital allowances because they were fixed structures – as a result allowances were precluded by CAA 2001, s 22. However, the tribunal then had to determine whether the teacher pods were not only fixed structures but also buildings. If this were the case and they met the terms of list C item 21, this would entitle AVL to claim capital allowances on them.

### Moveable pods

As mentioned, despite being identical to the basic pods in external appearance, the teachers' pods had more facilities and were akin to living accommodation, providing sufficient security, shelter and a greater level of comfort. This meant that the substance of the shelter afforded to its occupants was greater, precluding allowances under CAA 2001, s 21 as buildings.

However, the tribunal then had to consider whether the claim could be allowed on the basis that the expenditure fell within s 23 list C item 21 – moveable buildings intended to be moved in the course of the qualifying activity.

The pods were delivered to site fully constructed on trailers and placed in position using a forklift truck. It was not known how heavy each pod was though the company director was of the view that it could probably be moved – rather than carried over a distance – by four men, one at each corner. The tribunal concluded that although the teacher pods were moveable, AVL had no intention to move any of the pods in the course of its qualifying activity and therefore the disapplication of the exclusion for moveable buildings did not apply and the taxpayer's appeal in respect of these pods was therefore dismissed.

There are arguments that if the camping pods used on farm diversification projects were moved systematically to different areas of the farm and evidence were to be kept of such activity that would meet the 'moveable' point. With the number of camping days allowed without planning permission being extended to 60 days, a careful rotation of moveable camping pods around different areas of the farm could offer farmers a new income stream without going through a rigorous planning application process, although the exact permitted development rights and the more long-term planning permission should be considered.

### Marginal but important

The decision by the tribunal here was very marginal, highlighting the need to forensically understand all aspects of the asset in which a claim is to be made. Clearly, and as shown by other tribunals, the devil is often in the detail with capital allowances. The two types of pod looked identical from the outside, but the internal features made the teacher pods more akin to living accommodation than a temporary shelter. With so much farm diversification moving towards wild camping with very little luxury this is a very pertinent case.

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Farmers and their advisers should follow this case and other tax tribunals to use the opportunities of alternative income streams that maximise tax relief. As with all diversification projects, the set-up costs must be factored in as well as the planning permission, cashflow and budgets.

Wild camping with minimum facilities does tie into the minimum spent approach to achieve profitability and also now possibly to maximise the tax relief. Wild(ish) camping that involves self-build flexible structures on the farm, eg treehouses, must always consider the 'moveable' point that is so clearly made here. Some campers revel in the lack of facilities as it can bring them closer to nature while the camping providers can revel in the reduced costs and greater potential for tax relief. It is essential to consider the planning from the start. ●

#### Author details

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