

In the spotlight

Farmers may be considering capital expenditure while the increased annual investment allowance and subsidies remain available. **Libby James** focuses on the points they should bear in mind.

Capital allowances are enjoying time in the taxation spotlight, with several amendments introduced by FA 2019. From the new structures and buildings allowance (SBA) for the construction costs of non-residential structures and buildings, to the reduction in the writing-down allowance for special rate expenditure from 8% to 6%, changes are certainly afoot. Perhaps the most notable is the mammoth increase in the annual investment allowance (AIA) from £200,000 to £1m, albeit only within the short window from 1 April 2019 to 31 December 2020. This may well be turning the heads of many farmers seeking to make the most of such reliefs and invest in their farms while they still have the certainty of subsidies in their current form.

As well as the above revisions, there has also been a glut of decisions passing through the courts, with *Cheshire Cavity Storage 1 Ltd and another* (TC7301) and *S May and others* (TC6928) focusing on the definition of plant. Both were marginal cases and are therefore a timely reminder of the importance of understanding the legislation, especially given HMRC's attention seems to be firmly set on capital allowances.

Back to basics

In 2001, HMRC first attempted to define what was meant by plant by giving statutory authority to the precedents previously established by case law with the new CAA 2001. There are three key sections in this act to help establish what qualifies and what does not, these being s 21 to s 23.

Key points

- The annual investment allowance is increased to £1m until 31 December 2020.
- Recent tribunal cases are a reminder of the importance of understanding the legislation.
- The key provisions are in CAA 2001, s 21 to s 23.
- List C in CAA 2001, s 23 comprises items that should be eligible for a capital allowances deduction.
- The *Cheshire Cavity Storage* and *May* cases show the difference between a structure or premises and plant and equipment.
- In *May*, storage was simply a part of the process of conducting the business.
- Clients should be aware of the potential capital allowances available and the essential documents.



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Section 21 covers buildings and list A assets are treated as buildings. Such expenditure is not deemed to be plant, rather it is part of the 'setting' in which the business is carried out. As such, no capital allowances can apply.

Section 22 then moves to structures, assets and works, including the alteration of land. Again, such expenditure is not deemed to be incurred on plant and machinery and no capital allowances are available. List B gives examples of specific assets falling into this category, such as hard standing and drainage ditches.

Section 23 provides a glimmer of hope for an asset on the periphery of being caught out by s 21 or s 22. This section states the former two do not apply and as such, capital allowances are available on:

- thermal insulation of buildings;
- personal security;
- integral features;
- software and rights to software; and
- list C items.

List C comprises 33 items and should be examined in detail by an adviser before making a claim. This includes the following which may be useful for the diversified farmer to know about.

9. Refrigeration or cooling equipment.
15. Advertising hoardings; signs, displays and similar assets.
19. Caravans provided mainly for holiday lettings.
21. Moveable buildings intended to be moved in the course of the qualifying activity.
28. The provision of:
 - (a) silos provided for temporary storage; or
 - (b) storage tanks.
29. The provision of slurry pits or silage clamps.
30. The provision of fish tanks or fish ponds.

Notably, FA 2019 has made changes here too, amending s 21 and s 22 to make it clear that any reference to 'plant' in list C does not apply to assets listed in those two sections. HMRC's policy paper, *Capital allowances: clarification of allowances for costs of altering land* ([tinyurl.com/u8tslcm](https://www.tinyurl.com/u8tslcm)), published in October 2018, says:

‘The measure will put beyond doubt parliament’s intention that land alteration expenditure may qualify for plant or machinery capital allowances only where the plant or machinery itself qualifies for capital allowances.’

It seems, therefore, that despite the comprehensive lists initially provided in 2001, there is still much confusion about what qualifies and what does not. The following recent cases continue to demonstrate this.

In the courtroom

Already this year, we have seen two cases, *Cheshire Cavity Storage* and *May*, heading to the courtroom to debate the meaning of plant. The first case concerned underground store cavities whereas the second concerned a grain silo. Although the former lost their appeal, the latter was successful, and some key tests can be taken from both for the future.

While the subject matter in these two cases is different, they both have a storage-like function. This muddies the water somewhat when determining whether costs relate to plant or apparatus and thus qualify for capital allowances, or whether they are in fact incurred on a structure or premises with no allowances available in the cases in question here. The so-called ‘functionality test’ can be useful in such situations: is the asset’s function one of premises *within* which the business is performed or one of an asset *with* which the business is performed? However, while this is a good starting point, the nature of each business must be analysed to provide context and, if there are two functions, where does one go from there?

Context is key

In *Cheshire Cavity Storage*, the judge ruled that the primary activity was the short-term storage of gas. Although the appellant argued that they were in the business of gas distribution and processing, experts agreed that this could occur without the need for the cavities. Given that the trade was gas storage the taxpayer wasn’t able to argue that the cavities performed a function in a wider trade of gas distribution. The cavities had to be considered in the context of the narrow trade of gas storage.

Conversely, in *May* the business was one of arable farming and while storage in the silo was certainly an element to consider, grain was only stored until it could be sold – this being the primary purpose of the business. The judge said: ‘His business is the growing of grain, and the selling of the grain that he grows. The storage of the grain is merely one part of the process by which that business is conducted.’

In the *Cheshire Cavity Storage* case, the judge made the following observations which can be applied more generally.

- While the asset may be essential to the business, this alone does not make it plant. ‘Premises and plant can both be essential.’
- The fact that an asset may not be fixed to the land does not mean it is not plant (the cavities were in fact part of the land).

Planning point

The ‘functionality test’ can be useful. Does the asset function as premises within which the business is performed or as an asset with which the business is performed?

- A plant-like premises does not necessarily make premises plant if they also function as premises.

Premises-like or plant-like function

Storage is arguably a premises-like function rather than a plant-like function and in both these cases the assets have a function beyond that of storage. The question, however, is which is the predominant function.

The judge in *Cheshire Cavity Storage* conceded that the cavities did have a plant-like function to the extent that the building of pressure would cause valves to open and gas to flow to or from the cavity, much like a pump or compressor. However, he noted that this was due more to ‘an incident of the construction and not the reason they were constructed in that manner’. Further, given that the cavities were used to store gas to profit from price fluctuations, ‘the premises-like function of shelter and containment was ... the significant and predominant function of the cavities’, regardless of how short-term the gas was stored and turned over. The First-tier Tribunal therefore held that the cavities were ‘storage without function’ and thus dismissed the appeal that they were plant.

Conversely, although the silo in *May* was undeniably used to store grain on a short-term basis, the judge also found that the silo facility as a whole, including all its components and the structure itself, was specifically designed, built, and used to condition and maintain grain through a continuing process of aeration. The case reports: ‘This particular function of drying and conditioning grain is not performed simply by the movable items located in the main structure of the facility. Rather, the very structure of the building itself is integral to its successful performance.’

The predominant function was therefore plant-like and the tribunal was satisfied that it was a silo within the meaning of CAA 2001, s 23, list C, item 28.

What to take away

With farmland likely to be changing hands in the coming months and, indeed, the additional motive to invest in one’s business with the generous AIA at present, it is clear that capital allowances will continue to be a hot topic.

Understanding the legislation is undeniably key, but current case law helps clarify this, sets precedents and reminds us of areas to watch out for. Fully briefing clients on the potential capital allowances available will be vital to their decision-making. Further, ensuring clients retain all the necessary documents to corroborate any claims should help avoid a trip to court. ●

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