

Willis Property Investors Division

Capital Allowances, are you getting your just desserts?

Myths abound about capital allowances which tend to create a mystique about the process and put off potential beneficiaries when they buy or build property. Generally all commercial property transactions will involve a capital allowance element which can add significant additional value to the deal.

The most common allowance, for plant and machinery can involve savings of around 10% of the cost in a typical well serviced office building for tax paying property investors over their holding of an investment. Additionally other allowances which are less common and will depend on buildings use, can increase this tax saving value by making otherwise non allowable parts claimable. These are Industrial Building Allowances, Hotel Allowances and Research and Development allowances.

Advisors in this area will have a background partly within property cost, valuation and building technology; but also within property tax and accountancy. A good advisor will know the processes, the legislation and case law and the issues with HM Revenue & Customs. They will simplify the issues in the most complicated transactions and often produce

results which can sweeten the outcome of a deal when yields are low, or projects marginal.

However, as with many services of this nature lack of consideration at an early stage can lead to significant value reductions. This is unnecessary when advisors often do not charge for valuable early advice, preferring to take fees as a percentage of the claim value they can establish for their clients following the transaction.

The allowances are a legal entitlement and add value to a property investment which can be retained on an onward sale. They are there to be exploited and there is no reason to lose out through ignorance or lack of appropriate and timely advice.

Contributor, Andy White, Davis Langdon Crosher & James

Davis Langdon Crosher & James are a leading Capital Allowances Consultants. They advise upon construction projects and property transactions to secure tax relief for their clients.

Asbestos Worker Protection Directive

The Health & Safety Commission (HSC) has published a Consultation Paper containing proposals for revised asbestos regulations. This stems from the amendments to the European Asbestos Worker Protection Directive (AWPD). The revised regulations will consolidate the current three sets of regulations controlling exposure to asbestos into one. Good news for property owners, the 'duty to manage' introduced in the last round of revisions remains largely untouched.

Please contact your usual Account Director for further information on this topic or any one of our contacts listed on the back cover will be happy to assist.



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Latent Defects cover for residential properties

Following our Stop Press article in our Spring 2006 newsletter we are pleased to provide further details about this Council of Mortgage Lenders (CML) approved product.

For many years housebuilders and developers have been offered little choice when it came to procurement of home warranties and Latent Defects cover for residential properties with the only products being offered direct from NHBC and Zurich Municipal.

Things are changing with new Office of the Deputy Prime Minister (ODPM) initiatives such as:

- **Warranty Link Rule (WLR)** which enables private companies to carry out building control on new developments, if and only if the consumer can be protected against their negligence in ensuring that building regulations are met by a first party warranty.
- **Home information Packs (HIP's)** are also coming in the near future and again the ODPM has insisted that there is a minimum 10 year cover in place at the point of first sale.

Willis are pleased to advise that we can offer insurance solutions to meet our client requirements with Building LifePlans (BLP), who are an appointed underwriting agent of Allianz, that specialises in providing Building Warranties or Latent Defect Insurance policies on commercial or residential properties. Their residential policy is the widest cover presently available with the options of covering:

- the structure
- non structural
- all components within the property
- business interruption

Plus automatically as an additional benefit:

- land remediation (clean up costs following statutory notice upon the property owner)
- health and safety liabilities

The policy will meet the stringent ODPM requirements for both WLR and HIP's. Additionally, BLP's policy does not require the client to chase the builder in the first two years of cover to have latent defects remedied.

The cover is available for newbuild, refurbishment, conversion and recently completed schemes. The cover period can be up to 12 years from practical completion and protects against failure of the design, workmanship and materials, decanting of the tenants, provision of alternative accommodation and full reinstatement following remedial works.

Waiver of subrogation, which protects the contractor and design team, is available at an additional cost. This no fault cover offers comfort to all those signing up to a partnering agreement and prevents the need for potentially drawn out and expensive litigation.

All schemes to be considered by BLP have to undergo a comprehensive quality review at design stage and during the construction period. BLP has adopted a proactive approach to its technical review process with a dedicated technical consultant ready to speak to and assist all members of the design team. BLP operates a simple reporting regime which makes the whole process acceptable to contractors and designers alike. The process has over time demonstrated a reduction in defects in excess of 50%.

The technical fee is subject to VAT and is payable at the start of construction along with the insurance premium. The most competitive premiums are provided prior to the start of construction. Willis is pleased to announce that we have negotiated a special discount of 5% off all technical fees when cover is arranged through Willis Property Investors Division.

For further information or advice please contact Mike Carolan on 0207 295 6229 or by email carolanm@willis.com

European Property Insurance

With UK property owners and investors increasingly expanding into Europe the demands on their insurance brokers to meet their service requirements are greater than ever.

Many brokers often cannot provide a service outside of the UK and where they can it is often through an affiliated network of independent brokerages — this in itself can create a number of problems.

At Willis we pride ourselves on delivering a truly Pan-European insurance service to meet our clients' needs and have property insurance specialists across Europe, supporting the UK property team, acting as a European Practice Group. This group is expanding along with client demand for service within a particular territory. Current Practice Group member territories include:

Willis European Property Practice Group

Austria	Belgium	Denmark	France
Finland	Germany	Greece	Ireland
Italy	Netherlands	Portugal	Spain
Sweden	Switzerland		

In addition to these territories Willis operates in most other European countries, via our Glocal network — Global programme with local servicing. All offices are either owned or partially owned by Willis.

The key advantages to our clients of effecting a Pan-European insurance programme are highlighted below.

Advantages

- All assets in territories automatically covered
- Single broker placement of all covers worldwide
- Full control of what is and what is not covered
- Consistency of cover, limits and deductibles
- Maximises bulk purchasing power
- Ensures corporate protection without need to purchase separate gap cover
- Maximises coverage available

There are various programme designs that can be placed. The two most common and practicable are either a Fully Admitted or Freedom of Services programme. A Fully Admitted placement means that the programme is placed via the UK with the insurer issuing a Master Policy along with local

Flood Risk

Put simply, it is expected that the UK climate will continue to get warmer and wetter over the coming years. This is a review of what is known of flooding in the UK, what corrective measures are being taken, how the insurance industry is reacting, what you need to consider and, lastly, what Willis Property Investors Division (WPID) can do for you.

Firstly, it is interesting to dwell upon some of the known facts regarding flood and climate change within the UK:

- Over 2 million properties in England & Wales are at risk from flooding.
- The UK sea level is 10cm higher now than in 1900. 5 million people in England and Wales are at risk from flooding every year.
- 2 million homes have been built in the natural floodplain of rivers or the coast and are vulnerable to flooding.
- Property, land and assets valued at £220bn are annually at risk from flooding in England & Wales.
- Approximately 1 in 5 properties in flood areas are not adequately protected.
- The current cost to the insurance industry for UK weather claims is £1.1bn. The ABI estimate that by 2050 this will have doubled to £2.2bn, while an extreme year could cost £13bn!
- Since 1998, 28 people have died as a direct result of flooding.

The information above is concerning, however, it is important to understand what is being done about the risk of flooding and how this is being managed by the Government:

- Annual spending on flood defences has increased from £332m in 2000, to £564m in 2005. However, the Environment Agency estimates that up to £75bn will need to be spent on flood defences over the next 80 years.
- Water companies have promised to spend £1bn on reducing the threat of sewer flooding. New planning rules are to be introduced to reflect the Environment Agency's stated aims below.

policies issued in the territory concerned. A Freedom of Services policy would be placed from the UK covering all assets in all European territories but without the benefit of local policies.

We would usually recommend a Fully Admitted programme for property owners and investors. The benefits of a Fully Admitted programme are benchmarked against the main disadvantages of a Freedom of Services policy.

Fully Admitted	Freedom of Services
Local policies issued — needed for local legal requirements (lettings/contracts)	No local policy issue
Local account administration	No local broker administration
Local claims service	No local claims management

Within the Willis Property Investors Division (WPID) team we have an unrivalled level of experience of European property owners and investors insurances.

For any information regarding overseas investments please contact your usual Account Manager or Stephen Andrews on 020 7295 6223 or by email andrewst@willis.com

The Environment Agency, a part of DEFRA, is responsible for building, maintaining and operating flood defences within England and Wales; Scotland has a separate body. They plan to reduce the risk of flooding by:

- Ensuring more residents in flood risk areas know they are at risk and take protective action.
- Improve the coverage of flood warning services.
- Reduce the number of properties exposed to a high risk of flooding.
- Plan defences on how a whole area would be affected, not just individual locations.
- Prevent all 'inappropriate' development inside floodplains.

How has the insurance industry reacted? The majority of UK based insurers' are represented by the Association of British Insurers (ABI), and the ABI and their members have responded as follows:

- Provide funding and expertise to restore customers' properties, enabling normal life to resume as quickly as possible after a flood.
- They have improved their flood assessment data and communicate the flood risk, including risk-based pricing, so that customers can make informed decisions to manage the flood risk.
- Communicate effectively with government and local communities so that they manage the flood risk.
- For some years the ABI have successfully lobbied the government, speaking up for their customers.
- In respect of the availability of cover for flood damage we would advise that there is no guarantee that insurers' will provide this. However, as they have improved their knowledge on flood frequency, areas at risk and flood defences the likely scenario is that cover will only be restricted or, at worst case, unavailable in areas of very high risk flooding where there are no flood defence improvement plans.

Bearing in mind all of the above, and in relation to the flood risk for any prospective new purchases you may consider, the following should be included as part of your due diligence :

- Provide full risk information to WPID as soon as you have identified a potential investment property. We will check the general flood (and subsidence) risk, from the postcode. This will give you a snapshot opinion that, whilst not definitive, will at least give you guidance on certain risk factors to be aware of.
- Ensure the pre-purchase survey provides comment on the risk of flood, confirmation on whether the site is on a floodplain, as well as details of any known historical flooding. In all cases this should be forwarded to WPID.
- Always seek copies of the current insurance documentation. Any onerous policy terms and conditions in respect of flood could well be an indication of an adverse claims experience.

Lastly, what will WPID do for you?

- We will give you clear, helpful and professional advice.
- We will keep you regularly informed about what we are doing and how we are doing it.
- We will proactively negotiate with all appropriate parties on your behalf.
- We will provide the best possible result for you, including cover options and broad terms and conditions.

Please contact Dean Gallagher on 020 7295 6235 or by email gallagherdpj@willis.com if you would like any further information.

Employment Practices Liability

Introduction

The employment arena in many countries is heavily governed by employment related statute. These protect the employment rights of employees in areas such as race, age, and disability. The duties consequently placed on employers to understand and comply with legislation are complex and onerous.

In addition to claims under statute, an employee may bring a claim for, slander, breach of contract of employment, negligent evaluation, failure to promote or other breach of duty of care.

The high incidence of employment related claims in the United States is well documented and multinational companies with a U.S. subsidiary face a potentially catastrophic exposure. Whilst claims outside the U.S. remain relatively few and lower in amount, there is a trend towards increasing employee litigation. Legal costs involved in defending such claims are growing accordingly. Employment Practice Liability claims in the UK are on the rise although mainly centred on to the financial institution sector. However the media coverage these claims are receiving, is likely to encourage employee litigation into other commercial sectors.

The Exposure

This area of concern for employers has increased significantly in recent years, following the trend in the US. The willingness of employees to sue, employees awareness of their legal rights, and the size of awards being made, has increased substantially. In addition, EU employment legislation has broadened exposures for companies. The main areas of risk are:

- Wrongful or unfair dismissal
- Sexual harassment
- Failure to promote
- Equal pay
- Breach of Contract
- Direct or indirect discrimination based on:
Gender, Race, Disability, Religion, Politics.

Employment Practices Liability Insurance

Employment Practices Liability Insurance (EPL) has been available in the US for number of years and Insurers began to offer policies on a stand alone basis in Europe in the late 1990's. Wordings vary but in addition to straightforward discrimination, cover is specifically designed to address legal liability not necessarily resulting in personal injury including failure to promote, wrongful disciplinary, retaliation (including against whistle blowers), invasion of privacy, defamation and hostile working environments.

Limits of up to £100M are available and the deductibles tend to start at around £15K depending on the size of the company and its Human Resources

practices. Insurers have also begun to offer differing deductibles for each variety of EPL action as opposed to a blanket deductible across all claims. Legal information, consultation and audit services are often available with the policy.

Quotes are subject to detailed proposal forms, employment handbooks and sometimes an Insurer meeting with Human Resources to review the HR practices, procedures and culture of the company plus the extent and involvement of internal and external counsel.

The policy can cover the following:

- The Organisation
- Its subsidiaries
- Directors, Officers and Employees
- Their legal estates, heirs, and legal representatives

A broad range of claims is covered:

- Tribunal proceedings
- Civil and arbitration hearings
- Written demands for compensation
- Written demands for reinstatement
- Punitive damage cover is available where Insurable at law
- Third party claims can be covered

The Insurer has the right and duty to defend claims and to appoint or approve lawyers for this purpose. Defence costs incurred to defend claims are included within the limit of indemnity.

An element of cover is often provided under a Directors and Officers Liability policy but cover is only provided to individual directors, officers and employees where named in a writ as a co-defendant. Most claims are made against the company rather than individuals, so this cover can be of limited benefit.

Conclusion

Many lawyers believe that EPL litigation will increase threefold within the next five years. This will put considerable pressure on smaller companies with lower financial resources to implement measures that comply with HR best practice. Class actions which have been popular in the US could begin in Europe paving the way for a new breed of litigants and lawyers. Employers will need to implement rigorous training of managers in order to reduce and eliminate litigation. This climate of suing is very unlikely to reduce, therefore EPL insurance coupled with HR risk management will become more and more important.

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