

## cial property business?

As a generalisation men seem to be better at self-promotion than women. Make yourself heard and

**few on the JSE. Why is this so and what can be done?**  
There is no logical reason for this other than the lag caused by a

# Claim wear and tear for tax purposes

IT IS more important than ever to optimise and claim capital allowances correctly in the current harsh economic climate.

However, it is an open secret that many businesses do not claim all their allowances to which they are entitled.

There are many reasons for these failures, but these generally do not stand up to scrutiny.

In addition, there is a common practice by taxpayers to use the definition of movables and immovables in ascertaining whether or not capital expenditure on plant or articles qualifies for the purpose of section 11(e) of the Income Tax Act 58 of 1962 ("wear and tear allowances").

This misconception on the definition of qualifying wear and tear allowances results in wholly inadequate capital allowances claims, as certain assets attached to the building which may qualify are simply overlooked.

For instance, in the tax case Commissioner for Inland Revenue versus Le Sueur, 1960, it was held that the immovability test and considering the intention of the taxpayer in attaching the asset to the building was inappropriate in respect of determining whether the asset formed part of the building fabric for tax purposes.

Accordingly, certain qualifying expenditure incurred on plant or articles which did not form part of the building fabric, although it could be fixed to the building may

still qualify for wear and tear allowances. There is plethora of decided tax cases and global tax authority practice that provide relevant guidance on what is part of the building fabric and what constitutes plant and articles for tax purposes.

A recent judgment in a lower tax court ruled storage tanks, pipelines, pipe racks and pumps did not qualify for wear and tear allowances despite the finding in the Le Sueur tax case.

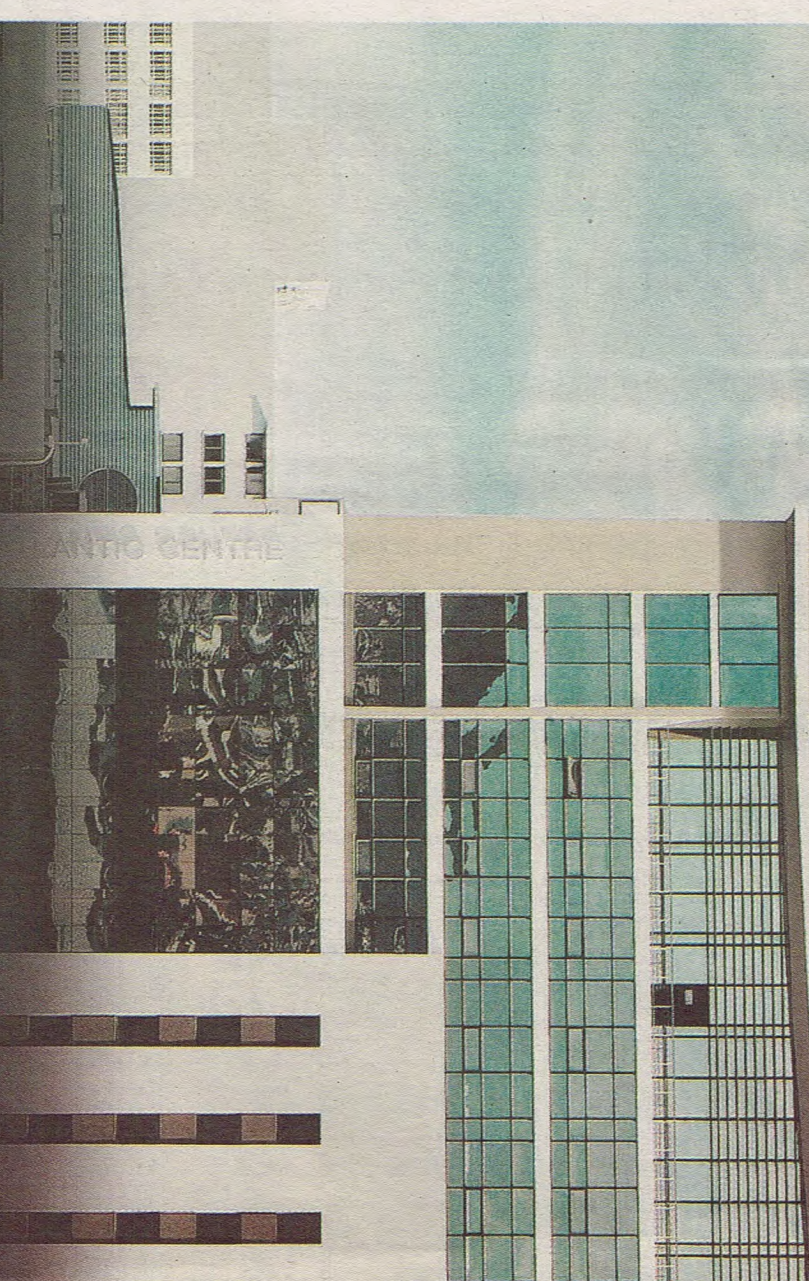
It relied on findings from other tax cases that were specifically found to be irrelevant in Le Sueur in respect of whether the asset formed part of the fixture.

It seems that decided cases like these and a dearth of specialised knowledge may contribute to the uncertainty around wear and tear. It is critical to have a robust understanding of the statutory rules for qualifying expenditure, the long history of decided tax cases clarifying what constitutes wear and tear assets, and having robust systems to capture these for tax.

At a time when tax planning is under intense global scrutiny it is crucial to bear in mind that legitimate tax planning involves using tax allowances for the purposes for which they were intended.

This is exactly what is achieved by putting systems in place to correctly optimise capital allowances claims in respect of all capital expenditure incurred on commercial property.

# HAPPEN



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