

Did You Know?

VAT on property – Considerations for vendors of commercial property.

When selling a commercial property, vendors should consider the VAT treatment of the sale and potential related VAT costs early in the sale process and ideally in advance of negotiating the heads of terms.



If this is not done, there is potential for conflict between the vendor and the purchaser as neither party may wish to bear a VAT cost arising from the sale.

Determining the VAT treatment of a commercial property sale can be complex. Generally, the sale of a property would fall into one of three following categories:

1. **Sale is automatically VATable;**
2. **Sale is VAT exempt;**
3. **Sale is subject to the VAT transfer of business relief (TOBR).**

When is a commercial property sale automatically VATable?

The first question for the vendor of commercial property to consider is whether they are obliged to charge VAT on the sale.

The general rule is that VAT must be charged on the sale of a newly completed property and not on the sale of an old property. A completed property is deemed old if no significant development work has been done to it in the 5 years before you sell it or, in some cases, if it has been occupied for two years or more before sale.

Development work can be quite broad in its scope from a VAT perspective so if any work has been carried out to a property, including relatively minor works, this would all need to be considered in the context of a sale of the property.

As always there are exceptions to these rules. Particularly sales of older residential properties can still be subject to VAT, in certain circumstances, even when they are more than 5 years old.

VAT Exempt Sales

Where the sale of a property is VAT exempt this can trigger a VAT liability for the vendor by way of a clawback of previously reclaimed VAT. To avoid such a VAT cost, the vendor may look for the purchaser to agree to exercise a joint option to tax. Where the joint option to tax is exercised, VAT arises on the sale.

Exercising a joint option to tax a property sale triggers VAT responsibilities for the purchaser over the 20 years following the sale and therefore not all purchasers are agreeable to it.

Where the property sale will trigger a VAT liability for the vendor that is significantly less than the VAT that would arise for the purchaser if the joint option was exercised, then the VAT discussion should focus on who is going to bear the lower VAT cost, the vendor or the purchaser or both.



Transfer of Business Relief

Transfer of Business Relief (TOBR) is an automatic relief that can apply to property sales in certain circumstances. Where the relief applies the sale is deemed to be outside the scope of VAT and as such, no VAT arises on the transaction.

TOBR applies to sales to an “accountable person” of assets forming part of a business where those transferred assets constitute an undertaking or part of an undertaking capable of being operated on an independent basis.

An “accountable person” for VAT purposes, is a person who supplies VATable goods or services within the State in the course of their business. This includes individuals, partnerships or companies that are registered or required to register for VAT. Additionally, an accountable person encompasses those whose intra-EU acquisitions exceed the VAT registration threshold, those who receive “reverse-charge” type services from abroad or are members of a VAT group.

There are other persons who may be regarded as being accountable persons for VAT purposes. The vendor should always get confirmation from the purchaser early in the process as regards their VAT status.

Where TOBR applies the purchaser “steps into” the vendor’s VAT shoes. This is beneficial for the vendor but may present an onerous responsibility for the purchaser in certain circumstances.

The vendor must consider if a sale would, but for TOBR, have been subject to VAT or VAT exempt. If the sale would be VAT exempt but for TOBR the vendor may be required to pass capital goods scheme records to the purchaser.

If the sale would, but for TOB, be subject to VAT then, in most circumstances, capital goods scheme records are not required to be passed over and there is no further capital goods scheme costs for the vendor.

Summary

Property transactions can have unusual and costly VAT outcomes. It is important that the vendor and their tax advisor consider potential VAT issues early in the process.



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Any questions?

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