



Did You Know?

VAT on property – Considerations for the purchaser of a commercial property.

VAT is often a significant consideration in commercial property transactions. Even where a property sale is not subject to VAT, there may be VAT consequences for the vendor, purchaser or both.



VAT being charged on property purchase

Where VAT is being charged on the purchase of the property, the purchaser must be satisfied that this VAT treatment is correct. Revenue can deny a VAT input credit where the VAT was not correctly charged by the vendor in the first place.

Further, where a property purchase is subject to VAT, the purchaser must also consider whether they are entitled to recover the VAT cost. This right of VAT recovery is connected to the intended use of the property by the purchaser over the next 20 years. If the purchaser intends to use the property for a business with full VAT recovery then typically they would be entitled to recover the VAT incurred on its acquisition.

However, if the purchaser's VAT recovery entitlement changes during this 20 year period, whereby the use of the property changes from being fully VATable to either partly VATable or exempt, then the purchaser must repay a portion of the purchase VAT reclaimed.

Alternatively, if the purchaser is not entitled to reclaim VAT at the time of purchase (e.g. the property will be leased under a VAT exempt lease) and subsequently the property is put to a VATable purpose within 20 years of the property being purchased (e.g. the purchaser opts to charge VAT on the lease a few years after purchasing), then the purchaser should be able to reclaim a portion of the VAT incurred at the time of acquisition.

Joint Option to Tax

Where the sale of a property is not automatically subject to VAT, the vendor may request that the purchaser agrees to enter into a "joint option to tax". Where this joint option is undertaken, several VAT impacts and responsibilities arise for the purchaser, including:

- **VAT Accounting Responsibility:** The purchaser becomes responsible for accounting to Revenue for the VAT arising on the transaction under the reverse charge mechanism;
- **VAT registration:** If the purchaser is not already VAT registered, they must register for VAT to account for VAT on the transaction;
- **Creation of a Capital Good:** The property becomes a capital good in the hands of the purchaser, which requires the maintenance of capital goods records. The purchaser must monitor the use of the property for the next 20 years or until the property is sold to ensure compliance.





Transfer of Business Relief

If VAT is not charged on the purchase, then you need to understand why. Particularly, VAT would not apply on the sale where transfer of business relief (TOBR) applies or if the property is old and has not been developed.

If the sale is subject to TOBR, obligations under the capital goods scheme must be considered by the purchaser. For example, if the sale would have been subject to VAT but for TOBR and the purchaser would not have had entitlement to recover all the VAT, then the purchaser must make a payment to Revenue of the VAT they would not have been entitled to recover.

For capital goods scheme records purposes the purchaser must create a new 20-year capital good scheme record for the property commencing on the date of acquisition. Again, subsequent changes in use could result in VAT adjustments either by way of VAT payments to be made by the purchaser or repayments to be received by the purchaser.

In a TOBR scenario there will be an obligation in certain circumstances for the vendor to provide a Capital Good Record; this can often prove to be troublesome especially where records have not been well maintained.

If a sale is exempt but for TOBR then the purchaser might be taking over the existing capital goods records from the vendor. From the purchaser's perspective, this may result in a VAT cost or possibly

VAT refunds if the VAT use of the property changes within the lifetime of the capital good.

Particular care should be taken where a purchaser is taking over existing capital goods scheme records. The VAT on capital goods scheme records is based on historical VAT recovered.

Pre-contract VAT Enquiries & Contract for Sale

In property sales, vendors are obliged to provide VAT information pertaining to the property in the form of the Law Society's Pre-Contract VAT Enquires (PCVEs). The information provided to a purchaser in these PCVEs should be carefully considered by the purchaser and their tax advisor to assess potential VAT responsibilities being taken on by the purchaser. The VAT clauses in the Contract for Sale must mirror the VAT treatment of the property sale, as detailed in the PCVEs.

Final Comment

The purchase of commercial property can trigger complex VAT considerations for purchasers. It is important that appropriate tax advice is obtained early in the sale process to ensure adequate time for the purchaser to fully consider these implications.

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