OHT Guide

VAT on Property

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The current VAT on Property regime was introduced on 01 July 2008, and the notes set out below relate to the "new VAT on Property" rules. Formal VAT advice is always recommended and should be sought where the VAT supply occurred before 01 July 2008, or the sale property is a transitional property (i.e. acquired under the old regime).

When is the supply of a property subject to VAT?

The supply of a completed property in the course of business is not taxable unless the building is new (S. 94 (2) VAT Consolidation Act 2010 "VATCA 10").

To come within the charge to VAT:-

- a property must have been developed recently so it is a new property, and
- it must have been supplied for consideration in the course of business.

What is a new property?

A property is generally considered "new" for 5 years after it is completed (the "5 year rule").

However, there is an exception to the 5 year rule. If a property is occupied for a total of 2 years after it is completed it will no longer be regarded as "new" on a second or subsequent supply where VAT was charged on a post completion supply (the "2 year rule").

It follows that the sale of many second-hand properties will not be subject to VAT as properties become exempt from VAT with the passage of time.

Once a property ceases to be "new", the supply of that property is automatically exempt from VAT. However, a vendor and purchaser may jointly opt to make a supply subject to VAT.

If the supply takes place within the VAT-life of the property (generally 20 years from the acquisition), there will be Capital Goods Scheme ("CGS") implications on sale which may result in a clawback of VAT recovered by the vendor if the parties do not opt to tax the sale. A vendor with a CGS exposure will generally want to opt to tax to avoid this clawback.

What is meant by developed?

Development in relation to land is defined in S.2 VATCA 10 as:-

- the construction, demolition, extension, alteration or reconstruction of any building on the land, or
- the carrying out of any engineering or other operation in, on, over or under the land to adapt it for materially altered use.

Development other than minor development, essentially makes a property 'new' for VAT purposes. For example, where an undeveloped property or an 'old' property is developed the property is considered 'new' for VAT purposes following the completion of that development.

Land is regarded as developed when:-

- a new building is constructed or
- an existing building is extended, altered or reconstructed, or
- an existing building is demolished, or
- work which adapts the land for materially altered use is carried out

Work which is not designed to make a material alteration in the use to which land is put is not development. Thus, no account is taken of fencing, land drainage, laying of roads for agricultural purposes, and so on.

Work on maintenance or repairs is not development.

What is minor development in relation to a property?

A completed property is regarded "new" for a maximum

Example 5 & 2 Year Rules

A Ltd is a construction company. It completes a commercial unit on 01 June 2010, and sells it to B Ltd on 20 July 2010. The sale is in the course of business and the building is 'new' under the 5 year rule as this is the first supply within 5 years of completion. The sale by A Ltd is subject to VAT.

B Ltd occupies the building from 01 August 2010, and then sells the property to C Ltd on 30 April 2011. The property is still 'new' for VAT purposes. The sale is within 5 years of completion and the property has not been occupied for 2 years. The sale by B Ltd is subject to VAT.

C Ltd occupies the building from 01 June 2011 up to the date of sale of the property on 01 October 2012. At this point the property has been occupied for a total of more than 2 years so the 2 year rule applies and the supply is exempt from VAT.

period of five years from completion. If development work is carried out on a property which is no longer “new”, and it is not just minor development work, the property is regarded as new again when the development work is completed.

'Completion' occurs when the development of the property has reached the stage where it can be used for the purposes for which it was designed.

Minor development consists of work that does not adapt the building for a materially altered use, and does not have a total cost exceeding 25% of the consideration for the supply of the building. Minor development does not renew a building.

When is a property supplied in the course of business?

The term in the course of “business” is very wide.

A person who engages in a single property transaction on a once-off basis may be acting in the course of business.

For example, a person who constructs or arranges for the construction of a residence on the site of an existing dwelling for subsequent sale would be regarded as acting in the course of business, even if the site was part of the grounds of that person's private residence.

How is a lease treated for VAT?

Certain very long leases (known as freehold equivalents) are treated in the same way as a supply of the freehold property (see above). The Revenue rule of thumb is that leases for 75 years or longer are generally freehold equivalents. The usual lease rules do not apply in such cases.

The standard rule for leases is that the grant of a lease is an exempt supply of services for VAT purposes. A landlord who makes an exempt supply when letting property is not entitled to deduct VAT incurred on the acquisition or development of the property, which is subject to the letting.

A landlord may opt to tax a letting (subject to certain exceptions), following which the lease is treated as a service and the rent is subject to VAT at the standard rate of 23%.

The landlord would then be making a VAT supply and entitled to deduct VAT incurred on the acquisition or development of the property.

A landlord cannot opt to tax a lease in the following circumstances:-

- where the property is occupied for residential purposes. (See Section 97(4) VATCA 10)
- where the letting is between connected persons. However, if the tenant is entitled to deduct at least 90% of the tax chargeable on the rent, this restriction does not apply.
- where the property is occupied by the landlord or a person who is connected with the landlord.

What is the Capital Goods Scheme (“CGS”)?

The (CGS) is a key feature of the 2008 VAT on property rules and it provides that each property on which VAT is charged has a VATable life (or CGS adjustment period) of 20 years (for a newly developed property) or 10 years (for a refurbishment).

The taxpayer recovers the VAT paid on the acquisition or development of the property and this recovered VAT may then be clawed back if the property is not put to a VATable use throughout the CGS adjustment period.

The CGS rules generally divide the VAT reclaimed on acquisition into 20 intervals (or into 10 intervals for a refurbishment) and the exposure to a clawback of the VAT reduces by 1/20 (or 1/10) as each interval passes, until there is no further risk of clawback after 20 years (or 10 years for a refurbishment).

If the VAT use of the property during any interval is different to the VAT use of the property during the initial interval, an adjustment for VAT purposes may be required, resulting in either a payment of VAT to Revenue or an additional refund of VAT.

Revenue Guidance

The Revenue Guide to VAT on Property contains useful examples demonstrating the rules on VAT and is available here.

The information above gives a brief outline of some of the tax implications of VAT on property. However the tax issues can be complex and we would suggest that professional tax advice is sought if complex VAT issues arise. If you would like to consult OHT on VAT please email info@ohanlontax.ie or contact a member of the OHT team.

If tax advice is required on any point raised in this article an email can be sent to info@ohanlontax.ie.

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Caveat: *These notes are intended as a general guide . OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances. OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*

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