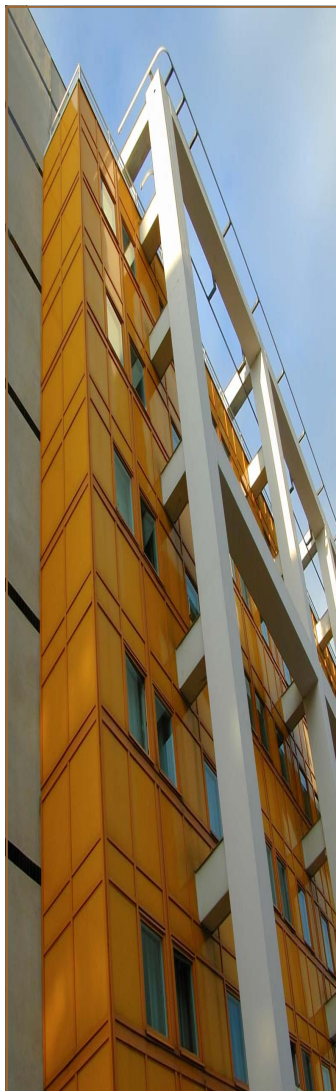




VAT ON PROPERTY 2012 UPDATE

Highlights:

- Sale of Freeholds/ Freehold Equivalent
- Letting of Property
- Capital Goods Scheme
- Transitional Measures



The VAT on Property system changed significantly in 2008 and the information contained herein is intended to be a general guide to the operation of this new system. However it should be noted that each property transaction is different and therefore careful consideration should be afforded to any potential property transactions in order to eliminate costly VAT pitfalls.

Since 1st July 2008 VAT on property can be broadly broken down into three specific areas:

1. Sales of Freehold Interests/Freehold Equivalent Interests
2. Letting of Property
3. Capital Goods Scheme

SALES OF FREEHOLD INTERESTS/FREEHOLD EQUIVALENT INTERESTS

After 1st July 2008 the question of whether VAT has to be charged on the supply of freehold interests, freehold equivalent interests and some 'very long leases' will depend on :

- if the supply is being made in the course of an economic activity,
- and whether it is the supply of 'New' or 'Old' property.

'NEW' PROPERTY IS DEFINED AS:

- Property completed/significantly redeveloped within 5 years of the first supply/sale, and
- Property which has not been occupied for a period of 2 years and which is being supplied for the second or subsequent time within five years of its completion. (Occupation by connected parties is ignored).

A property will be considered 'New' if there is development/redevelopment, other than development of a minor nature. Development is regarded as:

- the construction, demolition, extension, alteration of any building on the land, or
- the carrying out of any engineering or such work to materially alter the use of the property.

VAT Treatment of 'New' Property - Liable to VAT @ 13.5%

'OLD' PROPERTY IS DEFINED AS:

- Any other property not regarded as 'New' property as set out above.

VAT Treatment of 'Old' Property - Exempt with the Option to Tax

- Exempt**
- Sale of undeveloped land, where no connected build agreement - no VAT implications.
 - 'Old' property treated as Exempt - any input VAT previously recovered will have to be repaid to the Revenue. No VAT is charged on the sale.

- Opt to Tax**
- Vendor and purchaser jointly elect to charge VAT on the sale price of 'Old' property at 13.5%
 - Retain entitlement to input VAT recovered.
 - When Option to tax is exercised the Purchaser not the Vendor is the Accountable person for VAT.

Developers will always be required to charge VAT at 13.5% on the sale of residential properties, regardless of whether a property is considered 'old or 'new'.



VAT ON PROPERTY 2012 UPDATE



LETTING OF PROPERTY

With effect from 1st July 2008, all new lettings of property, irrespective of their duration, are 'Exempt' supplies for VAT purposes. However, the landlord exclusively can opt to tax the letting, without the need for agreement with the tenant.

Implications of this:

'Exempt' - Where the landlord chooses to treat the letting as exempt, he will have to repay to the Revenue, all VAT recovered on acquisition/construction.

'Opt to Tax' - Where the landlord opts to tax the letting, he will retain the entitlement to recover the VAT incurred on the construction/acquisition of the property. Furthermore, the landlord will be required to charge VAT on the rents received at 23%. Relevant clause must be included in the letting agreement.

If the option to tax a letting is exercised-

- It is property specific and will not affect any other lettings.
- Applies to all types of property, with the exception of:
 - Residential lettings,
 - Lettings involving 'connected persons', except where the tenant is entitled to at least 90% VAT recovery, or the VAT on the rent received exceeds a certain minimum amount.
- The landlord can cancel the option to tax at anytime subject to making a Capital Goods Scheme adjustment, (see below).

CAPITAL GOODS SCHEME

While the foregoing paragraphs deal with whether a sale/letting of property is taxable, the 'Capital Goods Scheme' (CGS), in essence deals with the recovery of VAT, and introduces the concept of property being a capital good and as having a 10/20 interval VAT life.

Property has a 10 interval VAT life where there has been refurbishment and a 20 interval VAT life for 'New' property, it may have both where a property is subsequently redeveloped.

- A person engaged in a 100% taxable economic activity will have an entitlement to recover all of the VAT charged on the acquisition/development of property.
- Where the purchaser has less than 100% entitlement to recover VAT a CGS adjustment will apply.

The 10/20 year VAT life of a property is broken down into different 'intervals' as follows:

- Initial interval begins on the date of completion/purchase and ends 12 months from that date.
- Second interval runs from the end of the initial

interval to the next accounts year end.

- Subsequent intervals correspond to the accounting year end.

HOW DOES IT WORK?

- On acquisition/development of property a taxable person calculates their entitlement to recover VAT based on their estimated % use for non-exempt activities.
- At the end of the initial interval a review of the actual use is carried out and an adjustment is made to either repay any VAT over claimed or recover additional VAT where the % use for non-exempt activities is lesser/greater.
- At the end of the second and subsequent intervals a similar review is carried out and where necessary an adjustment is made based on 1/20th of the actual tax recovered at the end of the initial period.

The CGS will only apply to the acquisition or development of properties on which VAT has been charged in the course of an economic activity.

Every owner of property subject to the Capital Goods Scheme will be obliged to create and maintain a "Capital Good Record" for each property they own. It must be available for inspection and contain all details relating to the property, including:

- **VAT charged on acquisition/development**
- **Date on which adjustment period begins**
- **Number of intervals, i.e. 10 or 20**
- **The % of taxable use for the first interval**
- **Deductible amounts for each interval**
- **Details of any adjustments under the scheme**
- **Details of any sale of the property**

TRANSITIONAL MEASURES

- Leases of 10 years+ in place prior to the 1st July 2008 will continue unaffected by these changes but subsequent Assignments/Surrenders will be subject to the Capital Goods Scheme.
- Waiver of Exemptions in place prior to the 1st July 2008 remain in force, subject to certain restrictions, however no new waivers can commence under the new system.
- An existing Waiver will not extend to a property acquired or developed after the 1st July 2008.
- Waivers of Exemption in place between connected persons were required to be automatically cancelled on the 1st July 2008 and the landlord was required to pay a cancellation adjustment in respect of that property only.
- Waivers in place between connected persons were not required to be cancelled where the tenant had at least 90% VAT recovery or where the VAT on rents is at least the permitted minimum amount as defined.

Should you require further information on any of the above please contact Mary McDonnell at mmcdonnell@dgl.ie or any one of our tax team.

