



Welcome to our monthly tax newsletter designed to keep you informed of the latest tax issues.

We hope you enjoy reading the newsletter; remember, we are here to help you so please contact us if you need further information on any of the topics covered.

Best wishes
DKC

VAT ON PROPERTY TRANSACTIONS – A SHORT OVERVIEW

INTRODUCTION

With some hopeful signs of a pick up in the Irish economy and more specifically in the property market it is perhaps an opportune time to look at some of the main VAT issues typically arising on property transactions. It should be emphasised that while this summary may be helpful in determining general principles applying it will be necessary in advising on specific transactions to take a case by case approach based on the individual characteristics of each case.

A SALE OF PROPERTY

The first point to be remembered in all transactions involving the sale of property is that the purchaser usually acquires a particular building not just for immediate consumption but for a longer period of time.

In VAT terms the deemed “lifetime” of property is generally taken as being 20 years. A purchaser may be a business person who uses a building to carry on his or her business with all sales receipts from that business coming within the scope of VAT. In that situation the purchaser would be entitled to reclaim all of the VAT included on the purchase price at that time. However, it will then be necessary for that purchaser to review the situation over each of the next 20 years and look at their general entitlement to reclaim VAT in each of those years based on how they are using the building then.

If after say 5 years the purchaser decides to use half of the building for personal storage this is outside of the charge to VAT and he would be required to pay back part of the initial VAT reclaimed to Revenue.

If and when the business owner decides to sell the building great care will be required to ensure that no VAT clawback arises to Revenue at that time. The position in relation to VAT on the sale of property in general will need to be considered at that time and this is now summarised as follows:

- Sale of a “new” building

A sale of a “new” building will automatically attract VAT at the 13.5% rate. A building is regarded as “new” when it was developed or constructed within the past 5 years. In addition if it is more than 5 years old but was significantly redeveloped within 5 years of a second sale VAT will apply on that second sale. The term “significantly redeveloped” means that the cost of renovation exceeds 25% of the VAT exclusive sales price of the building.

An exception to the 5 year rule will apply where a building was previously sold and was also occupied for more than 24 months in the past 5 years.



If the Business owner referred to above therefore decides to sell the building he acquired at a time when it is still regarded as "new" VAT will automatically apply.

- **Sale of a building not regarded as new**

In other cases when the Building is no longer regarded as new VAT will not automatically apply on the sale. However to avoid a clawback of VAT by Revenue in relation to the initial cost of the property which would arise if VAT did not arise on the subsequent sale, the Business owner will still have the option of entering an agreement with the purchaser to account for VAT on this transaction. This is known as a Joint option to tax and in this case the purchaser will need to be VAT registered. It will be the new purchaser rather than the seller who will account for the VAT in this case to Revenue.

It is essential that up to date VAT records are always retained in relation to all property transactions and that these are passed on to the purchaser in any transaction. It is mandatory to retain these records for the lifetime of the Building and this is usually reflected in a document known as a VAT Requisitions of Property which will be passed between Solicitors prior to a sale.

RENT OF A BUILDING

In many cases a purchaser of a building will decide to let the property and will be equally concerned with his or her entitlement to reclaim VAT charged. The same rules as to VAT recovery apply here as with any other acquisition - it is the use to which you put the property that determines the amount of VAT that can be reclaimed.

Since 2008 rental income is automatically exempt from VAT regardless of whether it is a short or long term lease which on first principles means that the purchaser would have no entitlement to reclaim VAT. Fortunately in the case of commercial property only, a landlord has an option to opt to tax the rent which means that VAT at the 23% rate will arise on all rental income arising from that property. In this instance the landlord includes an appropriate clause in the lease and collects the VAT which is passed over to Revenue.

Of course he must then review on an annual basis for 20 years how he is using the property and if for example in one year he does not charge VAT on the rent a clawback by Revenue of part of the initial VAT reclaimed on purchase of the property will take place.

In summary it can be seen that great care is required in what has historically been regarded by practitioners as one of the more challenging sections of tax legislation likely to arise with clients on an ongoing basis.

Please contact a member of our Tax Team if you would like to discuss any of the issues raised.

Contact Us: admin@dkc.ac

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