

Tax Bulletin

Impact of New VAT Rules on Current Property Transactions

The changes to VAT on property are due to come into effect on 1 July 2008. However, it is important to note that these changes will not only affect property transactions on or after 1 July 2008, but will also have a significant impact on current property transactions.

The new legislation will affect the following:

- Contracts of sale now issuing but where the sale will not be completed until after 30 June 2008,
- Leases currently being negotiated but which will not be concluded until after 30 June 2008,
- Long leases (leases for 10 years or more) currently in place but where the term of the lease does not expire until after 30 June 2008,
- Waivers of exemption in place on 18 February 2008 and not cancelled before 1 July 2008.

CONTRACTS FOR SALE NOW ISSUING

The time of supply of the property for VAT purposes is usually the date of completion of the sale. Therefore, in relation to contracts of sale now issuing but where the sale will not be completed until after 30 June 2008, the supply of the property will be chargeable to VAT under the new legislation.

New commercial buildings

The supply of new buildings (as defined in the new legislation) will be chargeable to VAT at 13.5% on the sale consideration.

Second hand commercial buildings

The supply of second hand buildings (buildings that are not new) which were developed before 1 July 1988 will be outside the VAT net (provided that the property was not redeveloped in the meantime).

Otherwise, the supply of second hand buildings will be exempt, but with a joint option to tax by the vendor and purchaser.

If the joint option to tax is not exercised, the vendor will suffer a clawback (time apportioned to reflect the remaining VAT life of the property) of the VAT previously recovered on the acquisition or development of the property.

If the joint option to tax is exercised, VAT at 13.5% will be chargeable on the sale consideration and will be accounted for by the purchaser under the reverse charge mechanism.

LEASES CURRENTLY BEING NEGOTIATED

The time of supply of leases for VAT purposes is usually the earlier of the date the tenant takes occupancy or the date the lease is signed. Therefore, in relation to leases currently being negotiated but which will not be concluded until after 30 June 2008, the supply will be chargeable to VAT under the new legislation.

The supply of all commercial leases (either for 10 years or more or for less than 10 years) will now be exempt, but with an option to tax by the landlord.

If the option to tax is not exercised, the landlord will suffer a clawback (time apportioned to reflect the remaining VAT life of the property) of the VAT previously recovered on the acquisition or development of the property.

If the option to tax is exercised by the landlord, VAT at 21% will be chargeable on the rents as they fall due for the VAT life of the property.

LONG LEASES CURRENTLY IN PLACE

Long leases currently in place but where the term of the lease does not expire until after 30 June 2008 may be assigned or surrendered after 30 June 2008.

The assignments or surrenders will be chargeable to VAT if the tenant who is making the assignment or surrender was entitled to some VAT recovery on the acquisition of the lease or the development of the property. The VAT chargeable will be based on the VAT previously recovered on the acquisition of the lease or the development of the property, time apportioned to reflect the remaining VAT life of the property and is accounted for under the reverse charge mechanism.

The assignments or surrenders will not be chargeable to VAT if the tenant who is making the assignment or surrender was not entitled to any VAT recovery on the acquisition of the lease or the development of the property. However, a joint option to tax the assignment or surrender may be exercised by the tenant and the assignee or landlord.

WAIVERS OF EXEMPTION

Waivers of exemption in place on 18 February 2008 and not cancelled before 1 July 2008 will cease to apply to lettings between connected parties (as defined in the new legislation) and where the tenant is entitled to less than 90% VAT recoverability unless the VAT on the annual rent exceeds a minimum threshold. This minimum threshold is calculated using a formula set out in the new legislation and provides for the repayment of the VAT recovered by the landlord over a maximum of 12 years.

REVIEW

We would recommend that all existing property structures and proposed transactions should be reviewed to take into account the impact of the new legislation as outlined above.

SUB-CONTRACTORS – REVERSE CHARGE

Although not a VAT on property issue, it is also important to note that with effect from 1 September 2008, VAT on construction services provided by a sub-contractor to a principal contractor must be accounted for by the principal contractor under the reverse charge mechanism.

Whilst this is being promoted by Revenue as an administrative saving idea, the real impact will be firstly, to place greater risk on principals (as they will need to account for the VAT) and secondly, Revenue will solve tax non-compliance in relation to sub-contractors in light of (1) sub-contractors will generally be in a VAT repayment situation consistently and (2) having regard to the ability of Revenue to offset such repayments against arrears under other tax heads.

For further information on any of the above matters or on any tax matters, please contact Anne Ledwidge (anne.ledwidge@rdj.ie) or Eoin Tobin (eoin.tobin@rdj.ie) at 021-4802700