



BT BRADLEY TAX CONSULTING

CONSULTING

VAT on Property

The material contained in this note is for general information purposes only and does not constitute legal, taxation or other professional advice. While every care has been taken to ensure that the information in this note is accurate and up to date, you should seek specific legal and/or taxation advice in relation to any decision or course of action. No liability whatsoever is accepted by Bradley Tax Consulting for any action taken in reliance on the information in this note.

© 2018 Bradley Tax Consulting. All rights reserved.

VAT on property is one of the most complex areas of Irish taxation, and we have provided a brief overview of some of the basic provisions of Irish VAT law as it relates to property. Due to the complex nature of the topic, qualified tax advice should always be sought in advance of undertaking a property transaction. This article focuses on the new rules that apply to properties acquired or developed on or after 1 July 2008, but there are different rules that apply to properties acquired or developed before that date.

When does VAT arise on a supply of property?

The supply of a **completed** property when the supplier is acting in the course of business is not subject to VAT unless the building is “new”. For VAT to arise on the supply of a property:

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

A property is generally considered “new” for 5 years after it is **completed** (the “5 year rule”). However, 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 subsequent supply of the property where VAT was charged on a post completion supply (the “2 year rule”).

A large number of second-hand properties will not be subject to VAT as properties become exempt from VAT as they get older. Once a property ceases to be “new”, the supply of that property becomes automatically exempt from VAT, but in some cases the buyer and seller may jointly opt to have VAT charged on the supply of property. One of the reasons to opt to tax may be related to the requirement to avoid a clawback of the VAT already recovered on the purchase or development of the property by the vendor.

When an “old” property becomes “new”

If an old property is developed, it may become a new property again for VAT purposes and VAT may need to be charged on the subsequent sale of the property.

Development in relation to land is defined 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 makes a property 'new' for VAT purposes. 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 that does not make a material alteration in the use to which land is put is not development e.g. land drainage or laying of roads for agricultural purposes, and so on.

If development work is carried out on a property which is no longer “new”, the property is regarded as new again when the development work is completed, but this does not apply if the work carried on is regarded as “minor development”.

A key requirement for VAT to be chargeable on the supply of a property is that the supply must be made in the course of business. This term must be understood in a very wide sense. For example, a person who constructs 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 previously happened to be part of the person's back garden.

Leases

Very long leases (known as freehold equivalents) are treated in the same way as a supply of the freehold property as outlined above.

The standard rule for leases which are not freehold equivalents 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 being let. Subject to certain exceptions, a landlord may opt to tax a letting and charge VAT on the letting as a supply of a service.

Where the letting is taxed, the landlord would be entitled to deduct VAT incurred on the acquisition or development of the property. However, a landlord cannot opt to tax a lease if the property is a residential property. In addition, if the property is occupied by someone connected to the landlord, the lease cannot be taxed unless the property is occupied by the landlord and/or someone connected to the landlord and the tenant is entitled to deduct at least 90% of the VAT chargeable on the rent.

The Capital Goods Scheme ("CGS")

The Capital Goods Scheme operates such that each property on which VAT is charged has a VAT life 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 by Revenue if the property is not put to a VATable use throughout the CGS adjustment period i.e. if the property is used to supply a VAT exempt good or service or is used for a smaller proportion of VATable purposes than was used in the first interval of the property's VAT life. However, if the VAT use of the property during any interval is greater than in the initial interval, the taxpayer may be able to reclaim additional VAT from Revenue.

Transfer of business relief

Transfer of business relief ("TOB") is a relief from applying Value-Added Tax (VAT) on the transfer of business assets, such as goods and goodwill, to a VAT registered person.

Those transferred assets must constitute an undertaking or part of an undertaking capable of being operated on an independent basis. Where this test is satisfied, the transaction is deemed not to be a supply for VAT purposes.

This relief is very helpful and can also apply to certain transfers of property, including some properties which have previously been let.

As this document is only a brief guide to some of the main rules of the Irish VAT on property regime, it is advised to take VAT advice in advance of completing any property transaction. The consequences of misapplying VAT law can be very expensive so it is important to take professional advice in a timely manner.

For further information contact:

Name: Marie Bradley, Bradley Tax Consulting
Address: 14 Upper Leeson Street, Dublin 4
Tel: +353 1 400 4123
E-mail: marie.bradley@bradleytaxconsulting.ie