

VAT on Property and RCT; Avoid the Pitfalls

In this article we outline a brief overview of Irish VAT on property considerations, the RCT (Relevant Contracts Tax) Procedure and also the effect that the application of RCT can have on property transactions. When it comes to property transactions, VAT and RCT should not become a costly afterthought. It is important to seek tax advice before you buy, sell, develop or lease a property to avoid any tax pitfalls.

The concept of 'one size fits all' cannot be applied to VAT on Property transactions. The VAT treatment of a sale or letting of a property depends on the VAT history of the property and the particular circumstances. We work closely with our clients to provide comprehensive tax advice that is specific to their particular property related transaction in order to minimise any associated tax costs.

VAT on Property; Sale of Property

VAT is chargeable on the sale of a property where the property is considered to be a "New" property for VAT on property purposes. Generally, a property is considered to be an "Old" property for VAT on property purposes if:

- more than 5 years have elapsed since its most recent completion and,
- the property has not been significantly developed in the last 5 years or,
- in some cases, it has been occupied for more than two years prior to sale or
- the use to which the property is put has not been materially altered i.e. (commercial use to residential use)
- there are some exceptions for certain residential property





The sale of a property subject to a lease or agreement to lease can be subject to Transfer of Business Relief. Under Transfer of Business Relief:

- Old Property – the liability for the remaining Capital Goods Scheme (see below) of the property passes to the purchaser with no VAT clawback arising for the seller.
- New Property – VAT accountable on sale, however TOB gives rise to no physical VAT payment

The VAT exempt sale of an old property can give rise to a VAT liability for the seller and therefore the VAT position of the property should be reviewed prior to its sale, in some circumstances a Joint Option to Tax the sale may be put in place to avoid a VAT cost for the seller.

There are some further exceptions to the above, e.g. properties acquired pre-July 2008 with pre-July 2008 leases in place.

Acquisition of a Property

Where VAT is charged on the acquisition of a property the purchaser can reclaim the VAT provided, they put the property to a Vatable use post acquisition. This may include utilising it for their taxable trade or having a taxable lease.

VAT Life of a property – Capital Good Scheme

A property has a VAT life of 20 years (unless it was redeveloped and also certain exceptions for residential property). Under the Capital Goods Scheme a property on which VAT is reclaimed is reviewed each year for this 20-year period. If the property is used for wholly Vatable purposes no VAT clawback would arise. However, an adjustment would arise for a year where the Vatable use to which the property is put in a year varies from the use to which the property was put in the initial period.

The basis of the Capital Goods Scheme is that at its end the proportion of VAT reclaimed on the property will mirror the Vatable use to which the property was put. The landlord is required to maintain a CGS record detailing the VAT reclaimed for each year and the applicable deductibility percentage. This document would need to be furnished on the sale of the property.



Letting of Property

Since 1st July 2008 the letting of property is VAT Exempt. For a purchaser to be able to reclaim VAT on the acquisition/development of a property it must be put to a Vatable use post acquisition/development. They can do this by Opting to Tax the lease. This renders the lease Vatable and the landlord would be obliged to charge VAT on rents (at the standard rate).

Different VAT rules apply to leases granted before 1st July 2008. There are VAT implications on the surrender/assignment of pre 1 July 2008 leases which are not outlined in this article.

VAT Clauses in Sales Contract/ Lease

Prior to acquiring/selling or letting a property it is important that the VAT history of a property is reviewed, and the appropriate VAT clauses included in the sales contract/lease. Certain wording should be included in such documents in order for the desired VAT treatment to be given effect.

Relevant Contracts Tax

Relevant Contract Tax procedure applies to certain payments made by a Principal Contractor to a subcontractor engaged by them to carry out certain activities.

A principal contractor may include:

- Property developers, building companies and all associated building trades as well as individuals who are connected with these businesses.
- It also includes all gas, water, electric or hydraulic power, dock, canal and railway undertakings.
- All Government bodies, local authorities, public utilities, boards and bodies established under statute are deemed to be principal contractors.
- A person or company is also deemed to be a principal contractor where they sub-contract all or part of a relevant contract under which they are a subcontractor for RCT purposes.

The services to which RCT applies include as follows:

- Construction services
- Supply and install contracts, e.g. power supply, telecommunications, heat, light, air-con, water supply, alarms, sanitation etc
- Design and build contracts
- Haulage services, crane hire, scaffolding
- Repair, demolition, site preparation and clearance services, including skip hire
- Agency services related to the provision of labour
- Operations which are preparatory to, integral to or for rendering complete the exploration, extraction or exploitation of natural resources (minerals, oil, gas)

Where RCT applies to a particular payment VAT should not be charged by the supplier and the purchaser should instead self-account for the VAT in its own VAT Return.

Where RCT applies the paying entity (Principal) is required to retain withholding tax at a rate of 0%, 20% or 35% from the payments made to the subcontractor. Prior to making a payment the Principal is required to submit details of the payment and subcontractor to Revenue who will then confirm the rate of deduction to be applied. The Principal is liable to pay this deducted amount to Revenue.

Where there is an agreement between the landlord and tenant, that the tenant will complete fitout works for the landlord/developer, then there may be RCT implications for the tenant payments to the builder. In addition RCT may also apply on landlord payments to the tenant depending on the particular circumstances. Therefore, a review of all elements of a lease transaction should be reviewed to determine not only the VAT but also possibly RCT implications.

There are severe penalties where RCT is not applied correctly and therefore it is of utmost importance that RCT is operated correctly.

For further information, please contact Catherine McGovern or Shane O'Donovan, Tax Partner at PKF or your normal point of contact in the firm.

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