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The CPD Fest 2020

Refresher on the VAT on Property Rules

Presenter:
Adam Sweetman - Mazars

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A Refresher – VAT on Property

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Agenda – A Refresher – VAT on Property

1. Introduction
2. "Old" VAT on Property Rules
3. "New" VAT on Property Rules
4. Transitional Rules
5. Capital Goods Scheme
6. Transfer of Business Relief
7. PCVE & Special Condition 3
8. VAT & Property Lettings
9. Summary
10. Questions & Answers

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01

Section 01:

Introduction

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Introduction – A Refresher – VAT on Property

- Finance Act 2008;
- New Regime with effect from 1 July 2008;
- Rationale: To simplify rules in relation to VAT on property transactions;
- 3 Regimes:
  - Old Rules;
  - New Rules;
  - Transitional Rules.

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02

Section 02:

"Old" VAT on Property Rules

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"Old" VAT on Property Regime - Overview

Considered to be confusing and opaque

Under this regime there were essentially 3 steps
- Outside/within the VAT net
- Ascertain what is being supplied
- Determine VAT payable

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"Old" VAT on Property Regime – Step 1

Step 1:

- Ascertain if a property was outside VAT net;
- If outside VAT net nothing further required;
- Not VATable & VAT not chargeable;
- Two categories of properties which were outside the VAT net:
  - Old properties not developed since Oct 1972;
  - Properties on which no entitlement to recover VAT.
- However, if property was within the VAT net – proceed to Step 2

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"Old" VAT on Property Regime – Step 2

Step 2:

- If within the VAT net – Ascertain what was being done;
- Property being sold or leased?
- Easy to determine if it was a sale or a lease;
- If being leased was it:
  - Granting of a Long Lease?
  - Granting of a Short Lease.

- When the above has been established – proceed to Step 3

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"Old" VAT on Property Regime – Step 3

Step 3:

- Determine how much VAT was payable?
- Sale – Easiest of the 3
- Granting of Long Lease:
  - Lease of greater than 10 years;
  - Professionally Valued;
  - Use a prescribed multiplier;
  - Multiply rent by ¾;
  - VAT 4A/4B Mechanism;
  - Legacy Leases.
- Granting of a Short Lease:
  - Lease of less than 10 years;
  - VAT Exempt;
  - No entitlement to recover – created problems;
  - Waiver of Exemption.

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03

Section 03:

"New" VAT on Property Rules

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"New" VAT on Property Regime – What Has Changed?

- Complete revamp of Irish VAT on property system with effect from 1 July 2008
- No more:
  - Categorizing lease interests into those that are:
    - More than 10 years – long leases (i.e. supply of immovable property)
    - Less than 10 years – short leases (i.e. exempt supply of services)
  - Economic Value Test (i.e. 3 methods for determining capitalized value of long leases);
  - VAT 4A/4B reverse charge mechanism for long leases;
  - Waiver of Exemption Mechanism.

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"New" VAT on Property Regime - Overview

- Property transactions categorized as:
  - Freehold – supply of goods;
  - Freehold equivalent leases – supply of goods;
  - Lettings – supply of services.
- Joint Option to Tax supplies of goods;
- Landlord's Option to tax for lettings;
- New connected party definition;
- Capital Goods Scheme;
- Transitional rules for interests held at 1 July 2008.

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"New" VAT on Property Regime – When do the New Rules Apply?

- When do the new rules apply?
  - Supply of Property
  - In the course of business that
  - Was completed on/after 1 July 2008 & also to
  - Supply of Property on hand but not completed on that date.
- What is meant by Supply of Property for VAT purposes?
  - Transfer by agreement of ownership of the goods, or
  - Transfer in substance of the right to dispose (as owner of otherwise)

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"New" VAT on Property Regime – When do the New Rules Apply?

- What is meant by in substance?
  - Freehold of a property but also
  - Freehold equivalent interest.
    - Very long leases also considered to be supplies of property;
    - Consideration is premium equal to value of property;
    - Nominal rent payable;
    - Not treated as a lease for VAT purposes
    - Leases of 5, 20, 35 years unlikely to be freehold equivalents;
    - Leases of >50 years should be look at on case by case basis.

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"New" VAT on Property Regime – What is a Supply VATable?

- When is a supply of property VATable under the "new" rules?
- The property itself must have been:
  - Developed, and
  - Supplied for consideration in the course of business.
- Where both conditions are satisfied the supply of property is taxable only while the property is considered ***new***.
- Before we consider whether a property is new for VAT purposes important to consider some definitions!!!

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"New" VAT on Property Regime – Development

- Development in relation to land is defined as:
  - the construction, demolition, extension, alteration or reconstruction of any building on the land in question, or
  - the carrying out of any engineering or other operation in, on, over or under the land in question to adapt it for materially altered use.
- Development other than minor development, essentially makes a property 'new' for VAT purposes.
- A property 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
  - Some engineering or other operation is carried out or work which adapts the building for materially altered use is carried out
- Work which is not designed to make a material alteration in the use to which a building is put is not development. Thus, no account is taken of fencing, land drainage, laying of roads for agricultural purposes. Work on maintenance and repairs does not constitute development. Obtaining planning permission had been obtained for development does not, of itself, constitute development for VAT purposes.

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"New" VAT on Property Regime – Materially Altered

- Materially altered – What was land building capable of being used for before and after the work was carried out.

- Indicative list of uses:
  - Residential;
  - Agricultural (i.e. barn);
  - Commercial/Professional (i.e. retail/office space/wholesale);
  - Derelict;
  - Non-Business Use.

- Where development converts from one of the above headings to another it would be considered to have been adapted for a materially altered use.

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"New" VAT on Property Regime – Minor Development & Significant Development

- To complicate matters – terms such as minor development & significant development
- Minor development is a level of development that does not make a property "new".
- It is development that
  - the cost of which does not exceed 25% of the consideration for the supply of the property.
  - does not (and is not intended to) adapt the property for a materially altered use
- If a sale takes place within five years of the completion of a development, and the development is considered as minor development, then the sale is be exempt from VAT.
- However, if sale take place with five years of development and cost of development exceeds 25% of the sale price (i.e. significant development), then the sale will be subject to VAT as the property has been made 'new' again.

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"New" VAT on Property Regime – Definitions – Completed/Occupied

- **"Completed"** in respect of immovable goods, means that the development of those goods has reached the state, apart from only such finishing or fitting work that would normally be carried out by or on behalf of the person who will use them, where those goods can effectively be used for the purposes for which those goods were designed, and the utility services required for those purposes are connected to those goods.

- **"Occupied"** in respect of immovable goods, means the property itself of occupied and fully in use following completion, where that use is one for which planning permission for the development was granted, and goods are let and fully in use by the tenant.

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"New" VAT on Property Regime – New for VAT Purposes

New Property

- What is considered new?
- Determined by the following:
  - The first supply of a completed property within fives years of its completion is subject to VAT (known as the 5 year rule);
  - The second and subsequent supply of a completed property within 5 years of its completion is subject to VAT if it has not been occupied for 24 months in aggregate (known as the 2 year rule);
  - Any supply of a developed, but incomplete, property within 20 years of when the development ceased (known as the 20 year rule).
- Important to note that the two and five year rule do not apply to sites.

Old Property

- Sales of "Old" property are exempt from VAT
  - Exception 1 – Sale of residential properties by a developer/builder where the two and five year rules do not apply;
  - Exception 2 – Sale of property & in connection with that sale there is a contract to develop.
- Possible Capital Good Scheme adjustment unless joint option to tax is exercised by vendor and purchaser or unless TOB applies to sale;

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"New" VAT on Property Regime – Other Considerations

Other Considerations

- Options – Treatment depends on the VAT status of underlying asset.
- Easements/Rights of Way – Supply of a service (Subject to VAT at the standard rate & services threshold)

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"New" VAT on Property Regime – Exempt Supplies

- Exempt if supply takes place later than the date provided under the 2 and five year rules;
- Exempt where supply takes place within the CGS adjustment period (i.e. VAT life of the property) then there will be CGS implications arising from the exempt supply.
- Vendor & purchaser may choose to jointly opt to tax the supply (referred to as the Joint Option to Tax)

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"New" VAT on Property Regime – Joint Option to Tax

- Vendor and purchaser must both be taxable persons engaged in business in Ireland;
- Must be agreement in writing signed by both parties;
- JOT must be entered into by the 15th day of month after month during which supply occurred;
- Purchaser responsible for accounting for VAT on the supply on a reverse charge basis in their VAT return;
- Vendor not required to charge or account for VAT;
- Caveat Emptor (i.e. Buyer Beware) – Why?
  - Brings an otherwise VAT exempt property into the VAT net;
  - The purchaser must monitor the use of the property for the next 20 years or until sold;
  - The purchaser will have an exposure to VAT costs for any VAT exempt use of the property over the next 20 years;
  - If the purchaser wants to sell in the next 20 years, they will have to get the next purchaser to agree to joint option to tax otherwise they will incur VAT costs;
  - The purchaser effectively creates a new capital good for which they must maintain a capital goods record.
- Benefit of the joint option to tax is for vendor (i.e. either avoiding VAT costs or recovering VAT previously disallowed)
- Be careful! – Specific Connected Party rules apply to Joint Options to Tax

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"New" VAT on Property Regime – Examples

Example 1

- Land acquired 01/12/2018 & Building demolished on 01/01/2019;
- First supply on 31/10/2020;
- Supply – VATable (Rationale: As developed within 2 years of supply).

Example 2

- Building completed on 01/01/2019;
- First occupied on 01/02/2019 & First supply on 01/09/2019 & Second supply on 01/03/2021;
- First supply – VATable (Rationale: As supplied within 5 years of completion);
- Second supply – Exempt (Rationale: As occupied for > 2 years (even though < 5 years old)).

Example 3

- Building completed on 01/01/2019;
- First occupied on 01/02/2019 & First supply on 01/09/2019 & Second supply on 01/03/2020;
- First supply – VATable (Rationale: As supplied within 5 years of completion);
- Second supply – VATable (Rationale: As supplied within 5 years of completion & occupied for < 2 years.

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"New" VAT on Property Regime – Examples (Cont'd)

Example 4

- A landowner and developer arrange for the development of a piece of land on the basis that the landowner will sell plots to various people who will be required to enter into an agreement with the developer to construct a house on the plot;
- Supply – Always VATable (Rationale: The sale of the plots and the agreement to develop are considered as connected and the sale of the land is subject to VAT).

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04

Section 04:

Transitional Properties

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Transitional Rules – Overview

- Applies to supplies of completed properties on hand at 1 July 2008;
- Any properties on hand, but not completed come under the the new rules;
- Freehold properties or freehold equivalent interests;
- Legacy leases – long leases (>10 years) created prior to 1 July 2008
- These were treated as supplies of goods under the old rules.
- Key Issue to determine is whether the vendor had a right to deduct VAT on the acquisition/development of the property

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Transitional Rules – Overview

If right to VAT deduction existed:
- New rules apply
- VAT applies if building is "new" – refer to 2 and 5 year rules
- No VAT if building is "old". However, joint option to tax available (reverse charge)

If no right to VAT deduction existed:
- No VAT on the supply
- Joint option to tax may be exercised, and if so, the purchaser accounts for the VAT

Let us consider the separate rules in existence for:
1. Sale of a transitional property
2. Letting of a transitional property
3. Assignment of a Legacy Lease
4. Surrender of a Legacy Lease

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Transitional Rules – 1st Transitional Transaction

The Transitional Sale – Section 95(3) VATCA 2010

Key Features

- The vendor must have acquired/developed the property before 1 July 2008;
- The property must be a "completed" property;
- The vendor must have been entitled to deduct any VAT on the acquisition/development of the property;
- The property must not have been significantly developed after 1 July 2008.

VAT Treatment

- Exempt with Option to Tax.

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Transitional Rules – 2nd Transitional Transaction

The Transitional Letting – Section 95(4) VATCA 2010

Key Features

- The landlord must have a transitional interested out of which the letting is granted;
- The landlord must have been entitled to deduct any VAT on the acquisition/development of the property;
- The landlord must grant a letting of the property;
- The landlord must not have a waiver of exemption that applies to the letting.

VAT Treatment

- Exempt with Option to Tax.

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Transitional Rules – 3rd Transitional Transaction

The Transitional Assignment – Section 95 (5) VATCA 2010

Key Features

- The tenant must have a legacy lease (i.e. a long lease obtained before 1 July 2008);
- Less than 20 years have passed since the creation or most recent assignment of the lease prior to 1 July 2008.

VAT Treatment

- If the tenant was entitled to recover VAT on acquiring or developing its interest the assignment is subject to VAT. The VAT payable is calculated in accordance with a formula as set out in the VATCA;
- If the tenant was not entitled to recover the Vat charged on acquiring or developing the property the assignment is exempt from VAT. The parties to the assignment can jointly opt to tax the assignment.

Transitional Rules – 4th Transitional Transaction

The Transitional Surrender – Section 95 (5) VATCA 2010

Key Features

- The tenant must have a legacy lease (i.e. a long lease obtained before 1 July 2008);
- Less than 20 years have passed since the creation or most recent assignment of the lease prior to 1 July 2008.

VAT Treatment

- If the tenant was entitled to recover VAT on acquiring or developing its interest the surrender is subject to VAT. The VAT payable is calculated in accordance with a formula as set out in the VATCA;
- If the tenant was not entitled to recover the VAT charged on acquiring or developing the property the surrender is exempt from VAT. The parties to the assignment can jointly opt to tax the assignment.

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05

Section 05:

Capital Goods Scheme

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Capital Goods Scheme – Key Elements

- A record of how a property is used;
- Required to determine entitlement to VAT costs recovery arising from the acquisition, development or refurbishment of a property;
- Deemed '20 year' life for new structures,
- Deemed '10 year' life for "refurbishment" works (i.e. additional development on a previously "completed structure")
- Requires an annual review of the use to which the capital good is put;
- Where there is a change in comparison with the use for initial period and adjustment may be required

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Capital Goods Scheme – When Does it Apply/Not Apply?

- The Capital Goods Scheme **(CGS) applies when you:**
    - Have been charged Value Added Tax (VAT) on the acquisition/development/refurbishment of a property; **and**
    - Are engaged in business.
- If you acquire or develop a property in these circumstances, you are known as the capital goods owner.
- Also applies to transitional properties and the owner of such properties are also known as the capital goods owner.
- However important to note that for freehold interests & freehold equivalent interests certain elements of CGS are disregarded.
- The Capital Goods Scheme (CGS) ***does not apply if:***
    - You are not engaged in an economic (business) activity;
    - You are a taxable person who acquires or develops a property in a non-business capacity;
    - No VAT was charged on the supply of the property to you.

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Capital Goods Scheme – VAT Life?

- VAT life broken down into intervals;
- Development has 20 intervals;
- Refurbishment has 10 intervals;
- During these intervals that CGS (i.e. VAT) adjustments made be required to be made;
- Initial Interval – Begins on the date on which property is completed & ends 12 months from that date;
- Second Interval – Begins the date after the initial interval ends & ends at the end of the owner's accounting year in which initial intervals ends;
- Third & Subsequent Intervals – Begins on the day after the year of the preceding intervals and ends at the end of the owner's accounting year.

Example:

- Development Completed: 01/02/2010
- Owner's YE: 31/12
- Initial Interval: 01/02/2010 to 31/01/2011
- Second Interval: 01/02/2011 to 31/12/2011
- Third & Subsequent Intervals: 31/12/2012; 31/12/2013 & so on!

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Capital Goods Scheme – Beware Big Swing!

- Special Rules;
- If taxable use for an interval differs by more than 50% points from the taxable use ibn the initial interval;
- Special rules recognise the fact that there has been a significant change in the taxable activities of the business;
- Require a full adjustment;
- Where such adjustment is required there is a re-balancing of the benchmark figures;
- Re-balanced figures are then used for all remaining intervals after the interval in which big swing occurs;
- While not common in practise important to be aware that such re-balancing may occur!

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Capital Goods Scheme – Records?

- The following information should be retained and disclosed on any such record:
  - Total tax incurred;
  - Input Credit;
  - The date on which adjustment period begins;
  - Date of acquisition if acquired or date on which development is completed;
  - Number of intervals in adjustment period;
  - Initial interval proportion of deductible use;
  - Total reviewed deductible amount (i.e. total tax incurred x % of taxable use in each intervals)
  - Details of any adjustments under the scheme;
  - Details of any sale of the property.
- Failure to maintain sufficient records for CGS purposes – Section 115 VATCA – penalty of €4,000 where proper records are not kept.

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Section 06:

Transfer of Business Relief

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Transfer of Business Relief – Legislative Provisions

- Section 20 (2)(C) VATCA 2010: Transfer of Ownership of Goods;
- Section 26 VATCA 2010: Transfer of Goodwill/Intangible Assets;
- Based on Provisions found in Article 19 & 29 of Council Directive 2006/112/EC;
- Definitions of accountable person & taxable persons are set out in Section 2 (1) VATCA 2010;
- For the purposes of Section 20 & 26 VATCA 2010 the term accountable person does not include a person registered for VAT only for the purposes of Intra-Community acquisitions or services received from outside the State;
- Where T.O.B. applies any such supply is deemed not to be a supply for VAT purposes;
- Application of provisions is mandatory.

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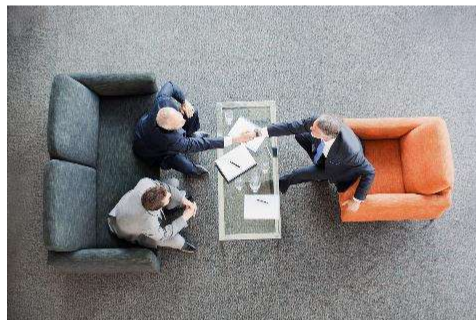
Transfer of Business Relief – Revenue Guidance

- TOB can apply to immovable property to include freehold interest, freehold equivalent interest & legacy leases;
- Must examine the totality of assets being transferred;
- Most recent revenue Guidance (issued in 2018) broadened the scope of TOB with respect to immovable property;
- Very welcome move by Revenue;



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Transfer of Business Relief – Revenue Guidance

- Revenue have confirmed that T.O.B. would apply/not apply in the following situations:
  - A transfer of an immovable good which is subject to either i/ an existing letting agreement or ii/ an agreement to lease, or iii/ a license to occupy would come within the TOB provisions, as together are capable of constituting an independent business or undertaking.
  - A transfer of an immovable good, of itself, without any additional assets (such as a letting agreement), which together with the immovable goods, would constitute an independent undertaking cannot come withing TOB, regardless of how the immovable good had been used prior to its transfer.
  - The transfer of a let property to the tenant will not be regarded as coming within TOB provisions as the only asset being transferred in those circumstances is the property itself and the transfer of a property without any additional assets, which together with the property would constitute an independent undertaking, cannot come within TOB, regardless of how the property had been used prior to its transfer.
  - The transfer of a retail premises together with the stock and fittings used in that retail business falls withing the provisions of TOB.
  - The transfer of the assets of a lettings business which includes property which is part let, part vacant and part undeveloped, by a single vendor in one transaction to a single purchaser, falls within the TOB provisions. The assets in question must, however, be shown to be assets of the letting business rather than assets of a separate business such as a development business. For the purposes of determining if a property is an asset of the letting business it will be necessary to show that the property was developed with the intention of being used for the purposes of that letting business. The appropriate CGS treatment should be applied to each property transferred.
  - Where a number of persons co-own a property which is let, the transfer by one of the co-owners of an interest in the property, whether to another co-owner or to a third party, is treated as falling within the scope of TOB.
  - Where an option to acquire an immovable good is purchased the VAT treatment of that option will follow the treatment of the immovable god to which the option applies so that, if the transfer of the immovable good falls within the TOB provisions s too will the sale of the option to acquire those immovable goods.

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Transfer of Business Relief – Interaction with Capital Goods Scheme

- Two main rules that apply;
- First rule: When the transfer would have been taxable but for TOB relief (i.e. property is considered new for VAT purposes);
- In such a scenario: New Capital Good Created
- Second Rule: When the transfer of property would have been exempt (i.e. property not considered new for VAT purposes or t/f of legacy lease);
- In such a scenario: Deems purchaser to step into the shoes for CGS purposes

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Transfer of Business Relief – Deductibility

- Prior to Finance (No. 2) Act 2013
- Services Costs incurred directly related to t/f of goods specified in S20 (2)(e) VATCA 2010 allowed pursuant to S 59(2)(m) VATCA 2010;
- However, Finance (No. 2) Act 2013 deleted S 59(2)(m) VATCA 2010;
- Now deductibility only allowed if underlying asset would have been VATable but for the operation of TOB;
- If exempt amendment provides no entitlement to VAT recovery on relates services incurred (i.e. legal costs);
- Position not necessarily in line with ECJ Case Law;
- However expensive to challenge!
- Revenue's own position is very clear!

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07

Section 07:

Pre-Contract VAT Enquiries & Special Condition 3

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Pre-Contract VAT Enquiries (PCVE's)

- PCVE document prepared by Law Society - Should be raised by a purchaser on a vendor;
- Purchaser should ensure comprehensive replies are received prior to signing;
- Most recent edition published in February 2014;
- Given ongoing changes to VAT on property legislation & practise – PCVE will continue to be subject to change and revision over time;
- Very useful tool for a vendor in researching the VAT history of the property;
- Should be completed by the vendor prior to drafting Special Condition 3 in the contract for sale;
- Once PCVE has been completed – will enable vendor to draft the VAT special condition most appropriate to the circumstances of the transaction;
- Prudence purposes – given passage of time between signing of contract & actual closing – recommend that the purchase should seek confirmation from vendor that replies to PCVE are still correct at time of closing.

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Pre-Contract VAT Enquiries (Constituent Parts)

- Document dividend into 9 separate and distinct parts:

1. Page 1:	Sets out the Vendor & Property Details;
2. Page 2:	Sets out the Purchaser Statement;
3. Section 1:	Chargeable to VAT;
4. Section 2:	VAT at reduced Rate;
5. Section 3:	Joint Option to Tax;
6. Section 4:	Transfer of Business
7. Section 5:	VAT at Standard Rate;
8. Section 6:	Deals with the sale of let property;
9. Section 7:	Deals with tenant refurbishments.

- Purchase should ensure that the vendor has answered all and in full the PCVE sections which are relevant to the proposed property transaction.

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VAT Contract Clauses – Special Condition 3

- Clause which governs VAT from a contractual perspective;
- Excellent Guide to Special Condition 3 appended to the PCVE document published by the Law Society of Ireland
- Practitioners acting for vendor should take careful pre-contract instructions from their client, adapt the clause or clauses as appropriate to t he sale and remove those which are not;
- Remember – contract for sale is a vendor's document and special condition 3 represents the best position for a vendor;
- The same cannot be said for the purchaser;

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VAT Contract Clauses – Special Condition 3

For example clause as drafted at 3.3.1:

> ***"3.3 The purchaser self-accounts for VAT at the appropriate reduced rate in a private treaty sale.***
>
> *3.3.1 The sale of the subject property is a freehold/freehold equivalent interest in the subject property, which is otherwise exempt. The purchaser is a taxable person which status the purchaser warrants to the vendor. The joint option to tax the sale under Section 94(5) or Section 94(7) as appropriate of the VAT Act is hereby exercised by the vendor and the purchaser. The purchaser shall account to Revenue for any VAT arising on the sale upon a reverse charge basis in accordance with Section 94 (6) or Section 94 (7)(c) as appropriate of the VAT act."*

- Clause automatically assumes that the purchaser agrees to a JOT without necessarily consulting with the purchaser beforehand;
- Onus shifts to the purchaser who must be alert to this wording and consequences for him;
- Take action to strike out this clause if necessary!
- Special condition 3 can be deleted in its entirety if VAT is no applicable to the sale.

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08

Section 08:

New Rules – Letting of Property

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New Rules – Letting of Property

- Leases created since 1 July 2008 are **VAT Exempt:**
  - No longer any difference between leases less than 10 years and greater than 10 years.
- Landlord not entitled to deduct input VAT incurred on acquisition/development of the rented property;
- To avoid this trapped VAT, landlord may choose to opt to tax new lettings and charge VAT on the rents at the standard rate of VAT:
  - Some exceptions to option to tax.
- Very long leases i.e. Freehold equivalent leases treated as supplies of immoveable goods not a service (letting for VAT purposes):
  - Need to be look at on a case by case basis.

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Landlord's Option to Tax

- Applies to individual properties (unlike old waiver of exemption provisions which applied to all rented properties);
- Must inform tenant in writing that option to tax is being exercised:
  - Clause included in the letting agreement, or
  - Issue notice to tenant advising of intention to opt to tax.
- Where tenant not notified in writing, a clawback of input VAT recovered on acquisition/development arises (CGS adjustment);
- Restrictions - Not possible to opt to tax a letting, where:
  - Property is occupied for residential purposes;
  - Letting is between connected persons. But if tenant entitled to >90% VAT recovery entitlement this restriction does not apply;
  - Where property is occupied by the landlord or a person connected with the landlord, including subtenants i.e. Original lease between landlord and unconnected tenant, with a sublease with a tenant who is connected with the head landlord. Again where person occupying property has >90% VAT recovery entitlement, this restriction does not apply.
- Definition of "connected" is very broad, therefore important to review for each letting.

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Landlord's Option to Tax - Termination

Termination of option to tax

- Landlord can enter agreement in writing or issue notice to tenant that option to tax no longer applies;
- Option to tax automatically terminated, where:
  - Landlord becomes connected with the tenant
  - Property becomes occupied by person connected with the landlord
  - Property is used for residential purposes

- **NB** CGS adjustment (VAT clawback) will arise where option to tax is terminated during adjustment period.

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Other Considerations

Letting versus Licence

- **Letting** is exempt, with landlord's option to tax;
- **Licence** is taxable at standard VAT rate;
- How to distinguish between a letting and a licence?
  - No definition in Irish VAT Law;
  - European Courts of Justice (ECJ) has defined a **letting** as:
    - *The letting of immoveable property...essentially involves the landlord of property assigning to the tenant, in return for a rent and for an agreed period, the right to occupy his property and to exclude others from it*
    - *The fundamental characteristic of a letting...lies in conferring on the person concerned,...,the right to occupy property as if that person were the owner and exclude any other person from enjoyment of such right*
- Typically a **licence** is mere personal permission to go on to, or to use, someone else's land without getting an interest in the land.

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Other Considerations

Letting versus Licence (Cont'd)

- **Letting** is exempt, with landlord's option to tax;
- The following are indicators that there is a **letting**:
  - Owner gives the user right to occupy the property
  - User gets the right to exclude others from the property
  - User pays for the use
  - Agreement is for an agreed period
  - There is a precisely defined area or space
  - Owner gives passive provision of area/space to the user
- Strongly suggest that each agreement must be reviewed on a case by case basis. Just because the agreement says it is a letting does not make it so!!

Works by Tenant

- Can be a Contentious Issue!
- VAT costs may arise on surrender – Appropriate clauses should be included in any lease agreement!

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Section 09:
Summary

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VAT on Property

- While VAT on property was simplified post 1 July 2008 – caution should be exercised!
- Establishing VAT history of the subject property is very important;
- Important to ensure contract documentation (i.e. PCVE & Special Condition 3), CGS records are in order;
- Be careful especially in "forced" property transactions;
- VAT on property rules are complex – often the subject of Revenue enquiries;
- Property transactions may trigger VAT registration obligations;
- Transactions should be reviewed on a case by case basis as VAT treatment may differ significantly;
- Never ever ASS-U-ME!

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