



VAT ON PROPERTY

Finance Bill 2008 saw the most significant changes to the VAT on property rules in Ireland since its introduction in 1972. The new property rules, which come into effect on 1 July 2008, are far reaching and will have implications for all businesses in Ireland with property interests and will even impact on businesses that simply trade from a property, as owner of the property, or tenant.

Tom Corbett, Senior Consultant, Tax & Legal Services, PricewaterhouseCoopers

The property changes come as a result of an extensive project commenced by the Revenue Commissioners in May 2005 with a view to creating a simpler and more robust system for the VAT on property regime. There is general agreement that the existing system is excessively complex.

Broadly the rules from 1 July 2008 will be:-

ΣThe most significant change is the introduction of a new Capital Goods Scheme, whereby VAT initially deducted on the acquisition of property interests will be subject to annual review and possible adjustment for the VAT life of the property – up to twenty years. The same will apply to any refurbishment of the properties – subject to a VAT life of up to ten years.

Therefore, any change in the use to which the property is put could result in an adjustment to the VAT initially gained. The change in the use of the property could arise due to a VAT exempt sale or letting of the property, or the use of the property changing, e.g. from a Grocery Store (generally 100% VAT recovery) to a Travel Agent (exempt from VAT). The adjustment could give rise to a VAT clawback or additional VAT being deductible depending on the circumstances – additional VAT could be deductible if a travel agent made a VATable sale of the premises before the Capital Goods Life of the premises had expired.

ΣSale (including very long leaseholds) of new properties continue to be taxable at 13.5%. A property will be regarded as new if sold within five years after construction – no risk of a Capital Goods Scheme Clawback. However, if it is a second or subsequent sale of the property within five years and has been occupied for two years or more then it will be regarded as a second-hand property.

ΣSale of Second-hand Properties will be VAT exempt (currently most second-hand commercial properties are taxable) but with an option to tax. If the parties do not opt to tax the sale the vendor may suffer a claw-back (time apportioned) of VAT previously deducted. Therefore, the vendor may seek the agreement of the purchaser to opt to tax the sale in order for the vendor to maintain (or even increase) his VAT deductibility entitlement.

ΣAll occupational lettings (of whatever duration) will be exempt from VAT – again with the option for the landlord to charge VAT at 21% on the letting. The landlord would typically exercise the option to preserve (or potentially increase) the landlord's VAT deductibility entitlement. However, the entitlement of the tenant to deduct VAT will be an important commercial consideration in deciding/agreeing whether or not to charge VAT on the periodic rents.

Therefore, the current system of charging VAT upfront (typically in the order of twice the

annual rent) on leases in developed properties of ten years or more will no longer apply.

ΣTransitional rules will be required to deal with, in particular, prevailing leases as at the commencement of the new rules on 1 July 2008. Any sale, assignment or surrender of a pre-existing interest must be examined in light of the new rules and the introduction of the Capital Goods Scheme.

The introduction of the new regime brings both opportunities and threats and introduces a level of additional administration. The administrative burden will impact on most property owners in Ireland and will have to be examined in detail on a case by case basis.

Recovery of VAT on Deposits Cancelled

The Finance Bill also saw an amendment to reflect a recent European Court of Justice case, i.e. now where an order or a reservation is cancelled and the trader is entitled to retain a deposit the trader may now claim a deduction in respect of any VAT accounted for on that deposit when it was received. This measure has retrospective effect for the last four years and should be considered by such businesses as hotels and any retail stores who take deposits from customers. ☑

Tom Corbett, Senior Consultant, Tax & Legal Services,
PricewaterhouseCoopers. Tel (01) 792 6582
Email: tom.corbett@ie.pwc.com