



This note deals in broad outline only with the requisitions on Value Added Tax. The issues involved can be very complex. In the case of doubt, appropriate expert advice should be sought.

These requisitions should be raised as pre-contract enquiries, or as part of the investigation of the lessor's title where a lease is being granted.

REQUISITIONS ON TITLE – VALUE ADDED TAX

1 HISTORY OF VATABLE INTEREST

1.1 When the Vendor acquired its interest in the property was VAT incurred on the acquisition price?

If no VAT was incurred when the Vendor acquired its interest in the property, and if the property has not subsequently been developed, then it is likely that the current disposal is outside the scope of VAT.

1.2 Did the Vendor acquire its interest in the property as a transfer of a business or part of a business from another VATable person within the meaning of Section 3(5)(b)(iii) VATA, 1972?

Section 3(5)(b)(iii) VATA, 1972 relates to the acquisition of an asset in the course of the transfer of a business. If the answer to 1.1 above is in the negative, but the answer to this requisition is affirmative, then the property may remain within the charge to VAT.

1.3 Has there been any "development" (within the meaning of the Value Added Tax Act, 1972) on or affecting the property since 1 November 1972?

If a property has not been developed or redeveloped since 1 November 1972, then it will be outside the scope of VAT. In practice, if expenditure on development work does not exceed 10% of the consideration on the disposal, or of the value of the disposal for VAT purposes, then it can be ignored in deciding if the property has been developed, unless the development involves a change of use.

If the answer to this requisition is no, then unless a Purchaser intends to contract with a third party developer to develop the property and in connection with the current acquisition of the undeveloped property, enters into a building agreement, the current disposal will be outside the scope of VAT.

1.4 In relation to any VAT incurred in relation to either activities at 1.1, 1.2 or 1.3 above, did the Vendor become entitled to or recover any element of VAT on the acquisition or development in accordance with Section 12 VATA, 1972?

If the Vendor did become entitled to recover any element of VAT on the

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acquisition or development, then regardless as to whether or not the Vendor claimed back VAT, the current sale will be prima facie subject to VAT unless the answer to requisition 1.5 is yes.

1.5 Has the property at any time subsequent to recovering input VAT as indicated at 1.4 above, become the subject of a self-supply within the meaning of Section 3(1)(e) or 3(1)(f), VATA 1972 ? If so, please explain.

It may be that, subsequent to the original acquisition of the property, it has been removed from the VAT net. This would happen if the Vendor was subject to a self-supply within the meaning of Section 3(1)(e) or 3(1)(f), VATA 1972, such as where the property was applied to a non-business use such as a private residence, or to a VAT exempt use such as a short-term letting where the landlord did not waive exemption of VAT on the rent, or the property was used for trading as a VAT exempt activity such as a financial institution.

Additionally, the creation of a long lease, being a lease for a period of greater than ten years will give rise to a self-supply within the meaning of Section 3(1)(f), VATA 1972 with respect to the landlord's reversionary interest.

2 IS THE CURRENT SUPPLY VATABLE?

2.1 Is the current disposal a transfer of a business or part of a business to another VATable person within the meaning of Section 3(5)(b)(iii), VATA 1972?

If the disposal of an interest in property is part of a transfer of a business or part of a business between two VATable persons, the supply would not be subject to VAT, as the conditions of Section 3(5)(b)(iii) VATA 1972 apply.

Where this Section applies, then the Purchaser should record that this is the reason why VAT was not incurred on its acquisition of the property as the property remains within the VAT net in relation to future supplies.

2.2 Does VAT arise on this transaction at any rate of VAT?

There are three rates of VAT applicable to property transactions, being zero, 12% and 21%. The zero rate would apply where the Purchaser is a holder of a Section 13A authorisation (available to certain companies who supply goods out of Ireland). Even if the current disposal attracts VAT at a zero rate, it is important that the Purchaser record this as it will be relevant with respect to any future dealings by the Purchaser with the property, as the property remains within the VAT net.

2.3 If no VAT arises, please explain why.

It is important to record whether VAT arises on the disposal. Any explanation as to why VAT does not apply must be consistent with the answers provided in Section 1 above.



2.4 If VAT does arise, please explain why.

Again it is important to record on what basis VAT arises. This should be clear from the replies at 1 above.

2.5 If VAT does arise, how is the amount of VAT calculated ?

There are three methods that may be available in calculating the amount of the VAT liability on the grant of a lease of 10 years or more. The basis to be applied in calculating the VAT should be agreed at the beginning of the transaction. In other disposals the rate of VAT should be specified. In dealings in land this will be 12.5%. However care should be taken to avoid a "VAT cocktail" whereby different items passing under the one contract or other instrument attract different rates of VAT. Unless a separate consideration is attributed to each, the contract or other instrument will attract VAT on the entire consideration at the higher rate.

3. VENDOR CHARGING VAT

3.1 Does the Vendor intend to charge VAT to the Purchaser?

The Vendor may not charge VAT to the Purchaser where the Section 4A authorisation procedure is invoked (see Section 4 below). In addition, certain assignments of interests between parties will not give rise to a liability for the Vendor to charge VAT, but may give rise to a reverse charge liability for the Purchaser.

3.2 Is the current disposal a taxable assignment or surrender of a leasehold interest such that the provisions of Section 4(8), VATA 1972 apply so that the Vendor is not accountable for VAT on the supply?

This requisition deals with an assignment or surrender of a leasehold interest and seeks to clarify whether the current disposal is a qualifying disposal within Section 4(8) so that the Vendor will not charge VAT on its disposal (the Purchaser being accountable). Section 4(8) will apply where the assignee or person taking a surrender is:

- a. A taxable person,
- b. A Department of State or Local Authority including a health board,
- c. A person supplying immovable goods not subject to VAT,
- d. A person engaged in the supply of financial services as outlined in paragraph (i) First Schedule VATA 1972,
- e. A person engaged in the VAT exempt letting of immovable property,
- f. A person engaged in travel agency services,
- g. A person engaged in insurance agency or insurance brokerage services,
- h. A person engaged in financial services brokerage or agency business,
- i. An insurance company,

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- j. An Post, postmasters and persons licensed to provide postal services,
- k. A person engaged in national broadcasting and television services,
- l. A person engaged in the transport of passengers and accompanying baggage.

On an assignment to a taxable person (or some other person specified in Section 4(8), VATA 1972) the assignor does not charge any VAT but rather the assignee is responsible for the VAT. Where the assignee is entitled to full input recovery he will not have to pay over any VAT and all that will be required of him will be a self-cancelling entry in his VAT return. In short no VAT will be paid on the assignment. The same position will apply to a taxable surrender.

3.3 Where it is proposed to charge VAT to the Purchaser, please furnish a draft VAT invoice now.

The purpose of seeking the draft invoice is so that the Purchaser may satisfy himself as to the calculation of VAT to be incurred with respect to the transaction and to confirm that the form of the VAT invoice is in order. It should be noted that the amount of VAT could change prior to completion, consequent upon a change of the multiplier.

4. SECTION 4A VATA 1972 REVERSE CHARGE PROCEDURE

4.1 On the creation of a lease of ten years or more where the Purchaser indicates an intention to avail of the Section 4A VATA 1972 procedure, please confirm that the Vendor will agree to use the Section 4A VATA 1972 procedure.

The Section 4A VATA 1972 procedure applies to leasehold interests for a period of ten years or more when first created. Upon issue of the appropriate Form VAT 4B, it is not necessary for the Vendor to charge VAT on the creation of the lease. This procedure may only be availed of where the intended lessee will have full (100%) VAT input recovery with respect to the lease interest.

Where the Section 4A procedure applies, the Vendor is required to issue an invoice with the following endorsement in lieu of the amount of tax chargeable:

"In accordance with Section 4A of the VAT Act 1972, the lessee is liable for VAT of £ ".

4.2 If so, please furnish Form VAT4A with Section A completed.

The Lessor/Vendor must complete Section A of the VAT Form VAT 4A. The Purchaser must then complete it and return it to the Vendor who will make the application for the Form VAT 4B.



- 4.3 Please confirm that the Vendor will submit the duly completed Form 4A to its Inspector of Taxes on a timely basis so as to ensure that Form VAT 4B will be available prior to completion.**

The Section 4A authorisation must be in place in advance of the completion of the lease agreement, or the date on which occupation arises, whichever is the earlier, in order to be effective.

5. OTHER LEASEHOLD INTERESTS

- 5.1 Is the property being disposed of the subject of leasehold interests created by the Vendor or its predecessor, or have any such leasehold interests previously existed since 1 November 1972?**

This requisition deals with property in which there are existing tenants or there have been previous tenancies. The Purchaser will require details of any such tenancies which arise from the granting of previous taxable supplies as it will determine the VAT status of both future surrenders of existing leasehold interests and potential future supplies. Additionally the right to recover input VAT in relation to post-letting expenses will transfer to the Purchaser.

- 5.2 Where there are any VATable leasehold interests in the property please confirm in respect of each such leasehold interest:-**

- a. The date of creation of each such lease.**
- b. The date of expiry of the leasehold term.**
- c. The VAT charged (if any) on the creation of the lease.**
- d. Whether the tenant (or its predecessor in title) of any leasehold interest has developed the property (or any part thereof) within the meaning of the VATA 1972 since 1 November 1972.**
- e. Whether the provisions of any such lease contain an option such that the tenant may extend the lease period.**
- f. The VAT life of any such interests.**

It is important for the purchaser to establish these facts in relation to any VATable leasehold interests in the property. The VAT life of any such leasehold interest as referred to in 5.2(f) should be distinguished from the lease period. The VAT life can be a different period, such as where the tenant entered into possession prior to the date of the lease or where a tenant has an option to extend the life of a lease beyond a period of ten years. A Purchaser should be aware that a subsequent failure of a tenant to exercise an option of the type referred to in 5.2(e) may give rise to a taxable surrender for the Purchaser.

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5.3 Has there been any surrender, abandonment, ejection or forfeiture of any such leasehold interest?

A surrender may in addition to the normal understanding of surrender or abandonment arise where a tenant fails to exercise an option of the type referred to in 5.2(e). This will only arise where the original lease period was for less than ten years but the option period resulted in the VAT life of the lease being a period of greater than ten years.

5.4 Please give details of any such events.

It is important to establish this, as the relevant VAT liability will continue with respect to any future leasehold interest to be granted in respect of the property by the Purchaser.

5.5 Has there been any "development" (within the meaning of the VATA 1972) subsequent to any such surrender, abandonment, ejection or forfeiture?

Where any such development has been carried out subsequent to any surrender, abandonment, ejection or forfeiture, such development will constitute a new VATable interest in the property.

For a more detailed treatment of Value Added Tax on property see the following:

"VAT on Property" by Fergus Gannon (5th Edition) – published by the Institute of Taxation

"VAT on Property" by Donal Kennedy – Law Society CLE Lecture 20 June 2000

"The New Rules for VAT on Leases" by Fergus Gannon – Law Society CLE Lecture 18 Nov 1997

"VAT on Leases" – published by the Law Society and Deloitte and Touche, October 2000

These publications cover the issues regarding VAT on property with particular emphasis on the VAT treatment of leases.

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