



The Principal Inspector of the Dublin VAT District has made a ruling that Lending Institutions' Solicitors are not entitled to issue VAT Invoices to Borrowers or their Solicitors in respect of fees for the taking up of documents or the preparation and completion of releases of Mortgages. The Revenue's view is that the Lending Institution's solicitor's contract is with his client and he is therefore entitled only to issue Invoices to that client.

Accordingly, the VAT Invoice must be issued by the Lending Institution's Solicitor to the Lending Institution and the amount of the VAT can only be included in the total fee charged to the Borrower or Borrower's Solicitor and should not be set out separately.

This reversed the recommendation made by the Conveyancing Committee in the March 1983 Gazette.

VAT ON LENDING INSTITUTIONS' SOLICITORS' FEES

CHANGE OF PRACTICE



**VAT ON
MANAGEMENT
CHARGES FOR
OFFICE AND SHOP
PROPERTIES**

The Irish Auctioneers and Valuers Institute have kindly supplied a copy of a letter clarifying the position with regard to the above, which may be of interest to members.

Dear Sir,

I refer to our recent discussion and confirm that, having regard to the special features of the application of VAT to property, the Revenue Commissioners are prepared, as a concession, to agree to the following arrangements for the transmission to VAT registered lessees of a deduction of VAT charged on these goods and services.

- (1) A landlord who is not registered for VAT and who is not obliged to register may seek the agreement of his Inspector of Taxes (VAT) to become registered by concession. The application should be made by letter to the Inspector and should give the address(es) of the property(ies), a list of the registered tenants, the accounting year/s and quote the registered VAT number of the landlord, if already registered. On being satisfied regarding the circumstances of the case, the Inspector will register the landlord. A landlord whom an Inspector agrees to register will be allocated a VAT number which will enable the landlord to issue to his registered lessees once a year, directly or through his management agents, invoices bearing this number and showing VAT where appropriate. Such invoices will enable the registered lessees to take a deduction for the VAT invoiced, subject to the usual conditions.
- (2) Landlords who are registered for VAT in accordance with the procedure described above will have the same obligation as persons who are obliged to be registered. They will, therefore, be obliged to keep records in sufficient detail to enable their VAT returns to be checked and validated. In the following instances their obligations will be somewhat modified.

- (i) Invoices

The landlords will not be obliged to issue invoices showing VAT as they receive payments from their lessees. Only one invoice showing VAT should be issued to the lessee and this is at the end of the landlord's accounting year. Any difficulties in this regard (e.g. changes in VAT rates during the year, end of an accounting year not coinciding with the end of a VAT taxable period) will be settled by the Inspector.

- (ii) Returns

Unless a landlord has several properties to which different accounting years apply, only one VAT return per year will be required. Although a VAT return form is intended to cover a taxable period of two months only (January/February, March/April and so on) the entry in the return should cover the accounting year of the property in question. This will mean that five "NIL" returns will have to be made each year. If "NIL" returns are not made, computer-operated follow-up procedures will be automatically activated.



If a landlord has several properties and different accounting years apply to different properties, as many “Positive” returns as there are accounting years will be required each year. “NIL” returns will also be required as appropriate.

The returns should show no net liability or repayment since they will merely represent the appropriate values of liable considerations invoiced to landlords by suppliers and the same values invoiced by the landlords to their VAT registered lessees. The returns should show the precise values involved, segregated as between the different tax ratings.

Conditions

- (3) It is a condition of the concession that it be kept within the strictest bounds and be subject to the following conditions in particular:
- (i) It will operate from accounting years ended March 1986 and later;
 - (ii) It will be subject to regular review;
 - (iii) It will be subject to withdrawal in any particular case at the discretion of the Inspector if he ceases to be satisfied that the conditions of the scheme are met or where he discovers that the limits of the Scheme are exceeded;
 - (iv) It will be subject to withdrawal in any particular year if Landlords claim relief for input credit for VAT to which these landlords would not otherwise be entitled.

Exclusions

- (4) The concession will not extend to the supply of service/goods by landlords using their own labour or other resources. Such supplies are taxable in the ordinary way. This is so whether or not a landlord was liable in respect of the letting of the premises in question.
- (5) The arrangement likewise does not apply to other expenses incurred on a joint basis by lessees, for example, staff employed jointly by a number of lessees subject to reimbursement by the others.

VAT Registered Landlords

- (6) Landlords who are already registered for VAT may also avail themselves of this concession once they obtain the agreement of their Inspector of Taxes. Such landlords continue to be obliged to make VAT returns in respect of those activities for which they are already registered or obliged to be registered.
- Details of the transactions covered by the concession should be included, at the appropriate time, in such a landlord’s ordinary VAT returns.

Payment on account

- (7) A VAT deduction may not be taken by VAT registered lessees in respect of VAT

VAT ON MANAGEMENT CHARGES FOR OFFICE AND SHOP PROPERTIES

(Contd.)



**VAT ON
MANAGEMENT
CHARGES FOR
OFFICE AND SHOP
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included in demands for payments on account made by a landlord or his management agent and VAT should not be separately shown on such demands for payment since a deduction may only be claimed by lessees in respect of VAT shown on the end of the year final invoices.

Any problems arising out of the operation of the concession should be addressed to the appropriate Inspector of Taxes (VAT). An example of the operation of the concession is shown below.

Example

A company develops a site as an office/shop complex and creates 35 year leases in favour of 10 lessees. The company undertakes, as landlord, to provide insurance, security and cleaning services and heat and light and the lessees covenant to re-imburse the company for such cost. The complex is managed by a property management agent on behalf of the company. The lessees undertake to re-imburse the company for the agent's fees also. Each lessee makes a quarterly payment on account of £2,500. At the end of the year the landlord or his agent calculated each lessee's liability as £10,175 made up as follows:

	Charges excl. VAT -£-	VAT -£-	Total -£-	Each lessee's share (1/10th) -£
Insurance (exempt)	50,000	—	50,000	5,000
Electricity (zero)	10,000	—	10,000	1,000
Heating Oil, Gas (10%)	10,000	1,000	11,000	1,000 + 100 VAT
Cleaning				
Security (23%)	20,000	4,600	24,600	2,000 + 460 VAT
Management (23%)	5,000	1,150	6,150	500 + 115 VAT
	95,000	6,750	101,750	9,500 + 675 VAT
(Total £10,175)				

A landlord, or the management agent on the landlord's behalf, who has made the necessary arrangement with his Inspector of Taxes should issue an itemised invoice (see specimen hereunder) showing the consideration excluding VAT and indicating separately the VAT on each liable charge. This will enable a VAT registered lessee to take the appropriate deduction in his VAT return.



**VAT ON
PROPERTY
TRANSACTIONS
A WORD OF
WARNING**

The Conveyancing Committee has been contacted by a number of practitioners who have encountered difficulties in the area of Value Added Tax on property transactions.

One such difficulty arose where a vendor's solicitor inserted into a contract for sale the usual clause which provided that the purchaser would pay to the vendor any Value Added Tax which would be chargeable upon the transaction. The purchaser's solicitor, acting in good faith and upon production of what appeared to be a valid VAT invoice, paid to the vendor's solicitor at closing the amount of VAT sought only to have his claim for a refund of this VAT disallowed by the Inspector of Taxes later on the grounds that VAT should not have been charged on the transaction in that particular case because it related to the sale of a business as a going concern.

Quite clearly, it is not safe to assume that if one pays VAT on foot of an invoice bearing all the usual characteristics that a refund of such VAT will automatically issue. A claim for a refund might well be refused on the grounds that the particular transaction, for any one of a number of reasons, might be one which does not give rise to a VAT charge.

The Committee recognises that the question of whether VAT should or should not be chargeable on a particular transaction is a complex one and often depends on factors which a purchaser will not be able to ascertain. In the light of this, the Committee has made representations to the Inspector of Taxes and the Inspector, in recognising the difficulties, has suggested that the purchaser's solicitors might contact the Inspector and show him the particular invoice on foot of which payment is sought so as:-

- (a) to get a direction as to whether the particular transaction gives rise to a charge for VAT, and
- (b) to ascertain whether a refund will be forthcoming without problems if payment is made on foot of that invoice.

Accordingly, the committee recommends that practitioners should, in a situation where they are in any way doubtful, contact the Inspector of Taxes as outlined. The Committee has been assured of prompt attention on all such enquiries.



The following is an urgent notice for conveyancers issued jointly by the Taxation Committee and the Conveyancing Committee.

With effect from 26/3/1997, radical new provisions apply in relation to VAT on property transactions. In future, that date will be a reference point for VAT and property along with 1 November 1972.

Special rules for valuing assignments and surrenders of leases

A landlord is accountable for VAT on the granting of a lease of vatable property for a term in excess of ten years. VAT is calculated by reference to the capitalised value of the lease so created. The method of calculation is set out in VAT regulations 1979 (SI 63/1979) Regulation 19. From 26/3/97, whether consideration is paid or not, assignments and surrenders of leases of vatable property will be chargeable to VAT on the capitalised value calculated under Regulation 19 had a lease of the property been granted under open market conditions for the residue of the term of the lease surrendered or assigned.

Reverse charges for assignees/landlords

With effect from 26/3/97, as a general rule (see new section 4 (8) of the VAT Act, 1972), where there has been an assignment or surrender of lease of vatable leasehold property, the assignee or surrenderee is the accountable person and must account for VAT on a reverse charge basis on the assignment or surrender but, because this does not apply universally, there is potential for tax traps.

Special warning on options which are allowed to lapse

In certain circumstances, permitting an option to extend a lease of vatable property to lapse can be treated as a surrender of a lease for VAT purposes, with the landlord generally being the accountable person.

Preservation of property within VAT net

A new concept of the 'VAT life or after life' of an assigned or surrendered lease has been introduced to ensure that certain transactions (assignments and surrenders) which would otherwise prematurely take vatable leasehold properties out of the VAT net will not now have that effect. During the VAT life or after life of the assigned or surrendered lease, further disposals of freehold or leasehold interests in the property may be subject to VAT.

Desirability of keeping records

From now on, keeping a careful record of the VAT history of a property is likely to pay dividends as such information may be required by both landlords and tenants to ascertain a future liability to tax.

NEW REGIME FOR VAT ON PROPERTY TRANSACTIONS



**NEW REGIME FOR
VAT ON PROPERTY
TRANSACTIONS**

(Contd.)

Failure to comply with legislation

The Revenue has made it clear recently that, even in situations where there is no net loss of VAT to the State, in future it may be seeking to enforce fines for compliance irregularities. Failure to advise a client to comply with VAT legislation can expose a practitioner to a negligence claim.

Other remarks

This does not purport to be a definitive statement of the law. It is merely a pointer to some of the more important features of the new regime. When acting in transactions which they feel may be affected by this new legislation, practitioners should be extremely careful and, if in doubt, take expert advice. Although complex, the new legislation is well within the competence of solicitors to master if reasonable efforts are made to study it.

The Revenue Commissioners have been asked to defer implementation of the legislation to allow a reasonable time for familiarisation but have not responded positively. It is hoped that a seminar can be organised in the near future to enable practitioners to become more fully informed. The Revenue Commissioners intend to issue a practice note explaining the new legislation in June.

Michael O'Connor



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

REQUISITIONS ON TITLE - VALUE ADDED TAX

EXPLANATORY MEMORANDUM



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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.

The Conveyancing Committee would like to thank the following for their assistance in the production of the Requisitions on Title on VAT and this Explanatory Memorandum:-

- The VAT Requisitions Task Force - Patrick Sweetman, Vivienne Bradley and Deirdre Morris.
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- Fergus Gannon and Donal Kennedy of Deloitte & Touche.

*Circulated to the
profession along
with the new
requisitions on VAT,
October 2000*



The new Special Condition 3 in the standard contract for sale has been introduced, firstly, to recognise any practice issues arising from the introduction of the reverse charge provisions in certain surrenders and assignments of leaseholds and the “Economic Value Test” introduced by the Value Added Tax Act, 1972 (as amended) and related VAT regulations (herein collectively called “the VAT Act”) and, secondly, to formalise the procedures in relation to sales where the “VAT Form 4A” procedure is to be used.

For the majority of transactions Clauses 3(a) and (b) are all that may be required if Special Condition 3 is not being deleted in its entirety, as will be the case in most residential sales.

Practitioners are warned that, where a substantive VAT issue arises, careful consideration should be given to the particular circumstances of the case and if practitioners are in any doubt about the application of the relevant provisions of the VAT Act they should proceed with great care and take specialist advice where appropriate.

It is recommended that the VAT treatment of any transaction should be determined and agreed pre-contract.

Notes:

- *A copy of the new Special Condition 3 has recently been circulated to every practitioner.*
- *The new Special Condition 3 can also be downloaded from the Society's website www.lawsociety.ie*
- *The new VAT clause will be incorporated into the contract document at the next available print run and the revised contract will thereafter be called “2001 (Revised) Edition”.*
- *Until then it is suggested that the three new pages be photocopied or downloaded from the website and inserted in contract documents in substitution for the old pages 3 and 4.*

**NEW VAT CLAUSE
IN CONTRACT FOR
SALE**

**2001 (REVISED)
EDITION**

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