

BUYING A BUSINESS PROPERTY? IF YOUR BUSINESS IS VAT EXEMPT, GOOD VAT ADVICE CAN SOMETIMES SAVE YOU MONEY!

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IF YOUR BUSINESS IS VAT EXEMPT (SUCH AS FOR EXAMPLE, A FINANCIAL SERVICE PROVIDER, INSURANCE BROKER, DOCTOR, DENTIST OR BOOKMAKER) WHEN BUYING A BUSINESS PROPERTY, ONE OF THE ISSUES TO CONSIDER IS THE VAT TREATMENT OF THE TRANSACTION. AS THIS IS COMPLICATED, MORE OFTEN THAN NOT, THE VAT ISSUES CAN BE OVERLOOKED. HOWEVER THIS CAN BE A COSTLY MISTAKE. SO GOOD AND EARLY ADVICE IS ESSENTIAL.

CASE STUDY

In March 2014, John White, a dentist, wishes to purchase, as a surgery, a unit in a small shopping centre in Co Dublin going at Euro 500,000 plus VAT, if applicable. The unit was completed in December 2005 and is held under a 500 year lease. The lease was granted on 1 March 2006 to Joe Black, the original purchaser, for a premium of Euro 1m plus VAT of Euro 135,000. A receiver has now been appointed to sell the unit.

THE LAW

A “Capital Good” for VAT purposes is a property on which VAT was chargeable on its acquisition or development or would have been chargeable but for the transfer of a business rules.

A “Capital Goods Adjustment” is a recalculation of a liability for VAT.

Where a Capital Good is sold during the Adjustment Period (usually 20 years from the date of acquisition or development), unless the sale is made subject to VAT, the seller must repay an apportioned part of the VAT which he reclaimed on the acquisition or development of the Capital Good.

A receiver who sell a Capital Good is responsible for the VAT liability of the owner of the Capital Good. Accordingly, where a property is a Capital Good in the Adjustment Period, unless the Receiver ensures that the sale is taxable for VAT purposes, he will be liable for the Capital Goods adjustment which arises on the sale.

Where the owner of a property neglected to account correctly for VAT on a property prior to the appointment of a receiver the receiver is not accountable for that VAT.

JOHN WHITE'S SITUATION

In the case of the sale to John White, the receiver claims that he has virtually no records relating to the VAT history of the unit, but to protect himself, the receiver will require that unless it is demonstrated to him that VAT Capital Goods rules do not apply, the sale of the unit will be treated as a taxable sale for VAT purposes.

THE INVESTIGATION OF THE VAT ADVISER

Upon making enquiries and checking all available documents and records, John's VAT adviser discovers that on 2 March 2006, Joe Black made a short term lease to a company which he owned at the time called Joe Black's Convenience Store Limited. He also discovered that on making the letting, Joe Black did not waive his exemption from charging VAT on short term lettings.

THE VAT ADVICE

On making the short term letting, a claw back of the VAT reclaimed by Joe Black on the acquisition was immediately triggered. On this basis, the VAT on the unit was a historic liability of Joe Black dating to 2 March 2006 and not a Capital Good for VAT purposes. The receiver can therefore sell the unit without requiring VAT to be accounted for on the sale.

The saving in VAT for John White on the purchase of the unit is Euro 67,500.15 of the 28 Member States, including Ireland the UK and Sweden, have availed of this article to permit the establishment of VAT groups.

CONTACT INFORMATION

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DISCLAIMER

The above is intended as a general guide to law only. It is not intended as a full statement of the law on any point. Before taking action in relation to any matter, full professional advice should be obtained.