

Property & Construction

September 2008



VAT Alert for Residential Developers

With the current decline and uncertainty in the housing market many developers will be considering letting out their newly built properties which they currently cannot sell.

Although VAT cannot be charged on either a sale or letting of residential properties there is nevertheless a difference between a freehold sale and granting a short term lease that will have implications for VAT recovery.

The right to recover VAT is determined by two basic principles.

- First of all the expenditure has to be for the purposes of the VAT registered business.
- Secondly the expenditure has to relate to taxable supplies made or to be made by the business.

For house builders this latter condition is satisfied when newly constructed houses and flats are disposed of by way of a freehold sale or the grant of a lease for a period in excess of 12 years.

Both are referred to as the grant of a major interest and are zero rated (a taxable supply). However granting a lease for a period of 21 years or less is an exempt supply and this is where a problem with VAT recovery can occur.

Where the first supply of a house or flat is the grant of a short term lease the developer is required to review the VAT that has already been reclaimed in respect of the construction of the residential building e.g. building materials, legal and professional fees, VAT on conversion costs etc and repay all or a proportion of that VAT to reflect the VAT exempt supplies that have been made.

This so called clawback rule can apply for a period of up to 6 years after the VAT is first incurred. Where the developer subsequently grants a major interest in the property that is still a zero rated supply.

There are a number of possible solutions to this problem which will minimise the VAT loss when properties are rented out for a short term.

This can involve negotiating with HMRC regarding the method to be used to calculate any VAT loss or moving the properties that are to be let out to another company or entity.

In all cases the VAT and other tax implications need to be carefully considered before any transactions are entered into.

In summary, if you are considering letting a residential property please talk to us in the first instance.

Stamp Duty Land Tax

The Government has announced that the stamp duty threshold for residential properties is to be increased from £125,000 to £175,000 for a period of one year commencing on 3 September 2008.

There has been comment in the press that, whilst welcome, this move will do little to boost the residential market.

The increase brings the threshold more in line with average house prices and will benefit many home buyers, in particular helping first time buyers onto the property ladder.

Although the announcement is good news for home buyers in the current climate, there is no change to the position for non-residential or mixed use properties.

The legislation is being continually reviewed to prevent perceived avoidance of SDLT and the rules are complex.

If you are considering a property transaction and would like advice on the most efficient way of structuring it for SDLT purposes, contact us at an early stage in the process to discuss the transaction.

Construction Industry Scheme Update

Even with the current economic slowdown in mind, which is especially hitting the construction sector, HMRC continue to remove gross payment status held by businesses in the construction industry.

Essentially, where a business in the construction industry wants payments to them to be made gross of any CIS tax deduction it has to pass 3 tests. They are the business, turnover and compliance tests and are rigidly applied when consideration is given to a business being granted gross payment. As part of the 12 month rolling automated Tax Treatment Qualifying Test (TTQT) HMRC may withdraw gross payment status if, for example, a payment of CIS tax or PAYE is made late on four or more occasions or a monthly return is submitted more than 28 days late.

Needless to say, removal can have a huge impact on cash flow in a business so it is imperative to get an appeal lodged as soon as possible and at the latest within 30 days of the notice. We can assist in putting together valid grounds for appeal where gross payment status has been removed and help to re-instate it.

If you would like further information on the above issues please call your usual contact or telephone 0800 0665 894 and speak to:-

Andrew Botham
andrewb@cooperparry.com

Steve Taylor
stevet@cooperparry.com

Herminder Sandhu

herminders@cooperparry.com

Alternatively please visit <http://www.cooperparry.com/what-we-do/audit-assurance/oursectors/property-construction>

COOPER ■ PARRY

This email is published by Cooper Parry LLP. While all possible care is taken in the compliance and presentation, no responsibility for loss occasioned by any person acting or refraining from actions as a result of the material in this email can be accepted by the authors or Cooper Parry LLP. Any opinions or representations made are the opinions of and representation of the authors and do not necessarily represent the views of Cooper Parry LLP. Cooper Parry LLP is a limited liability partnership registered in England. Registered No OC301728. Registered Office 3 Centro Place, Pride Park, Derby DE24 8RF.

This email was sent to peter.willows@wtpartnership.com Click here to *instantly* unsubscribe from future Cooper Parry mailings.

[Click here to view the web version in your browser.](#) Forward to a friend.