

TAXATION OF COMMERCIAL PROPERTY

Unlike the laws in England and Wales relating to property, planning permission and building control, taxation law in the United Kingdom is wide.

Overview of Tax Issues

The taxation liabilities and issues which arise in relation to commercial property are broadly similar to those which arise in relation to residential properties.

Income tax and company (or "corporation") tax law are substantially the same for both commercial and residential property, both in relation to the Irish and the UK tax law treatment. Please refer to our guide on the taxation of English rental income both in Ireland and in the United Kingdom in our Residential Property brochure. Please also refer to our general UK Tax Guide.

The main differences between residential property and commercial property transactions arise in the area of UK VAT and UK Stamp Duty Land Tax. Irish VAT and Stamp Duty do not generally apply to UK property transactions. This chapter concentrates on those areas.

Value Added Tax

VAT in United Kingdom is based on the same principles and procedures as VAT in the Republic of Ireland. This is because VAT derives from European Law. Despite the similarities, there are very significant differences in detail between the Republic of Ireland and United Kingdom VAT.

The sale of new residential property is zero rated. This means the developer can recover VAT but does not charge it. The sale of newly developed commercial property is subject to standard rate of VAT. From the perspective of a developer or contractor, zero rating is preferable as it allows the reclaim on VAT on all purchases or "inputs" without

applying an actual charge on sales or "outputs". The obligation to account for VAT remains but zero rating constitutes a very significant break. In contrast, exemption from VAT means that there is no VAT on the sales or "output" but correspondingly there is no ability to reclaim VAT on the purchases or "input".

The VAT treatment of commercial properties is different to that of residential properties. In practice, the resultant exposure to VAT may be reduced by reason of the fact that a business purchaser is likely to be itself entitled to reclaim the VAT.

Construction, civil engineering and building are subject to standard rate (15 %) VAT. The sale of a new freehold building is standard rated. The sale of an old freehold building is exempt, but subject to the option to tax. The grant of a lease for any term, the assignment and surrender of a lease is exempt but also subject to the option to tax. Repair, alteration and demolition works are standard rated.

The option to tax causes a charge to VAT on a sale or lease, but correspondingly allows reclaim of VAT on the purchases or input. An option to tax may be advisable where the sale or lease is made to a party who itself is in the VAT net (e.g. a business who can reclaim VAT on its purchases).

In the case of a lease, the general exemption from VAT would mean that it would not be possible to reclaim inputs unless an option to tax is exercised. A purchaser who is entitled to reclaim VAT may be willing to opt to tax thereby securing that no net VAT is payable.

The commercial developer will typically incur substantial VAT on the construction and civil engineering contracts. The commercial developer will want to sell to a purchaser who can reclaim VAT or to lease to a lessee who can waive the exemption and opt to tax effectively recovering the tax.

The election to opt for tax is done by agreement and is on a property by property basis. A commercial owner can pick and chose which of his properties should be subject to

VAT standard rates. It is not possible to choose to waive the exemption in respect of part of the property only.

As VAT is derived from European law, the entities which are exempt from VAT (meaning they cannot recover VAT on their leases or purchases of properties) are broadly the same as in Ireland e.g. banks, building societies and insurance companies. These types of business suffer VAT costs which need to be negotiated and considered in relation to sales and leases. There is effectively an irrecoverable VAT liability which must be paid.

A company or person carrying on a taxable business is obliged to register. Under certain circumstances a voluntary registration can be undertaken. Activities associated with the development and construction of land and services linked to it, will be taxable in the United Kingdom irrespective of where the services are undertaken. For example, legal services provided in Ireland relating to English conveyancing are taxable in the United Kingdom and not taxable in Ireland. The same would apply to architectural, engineering and other equivalent services. If an Irish professional services provider is providing services in relation to United Kingdom land then he in fact must register for VAT in the United Kingdom once his annual turnover exceeds the relevant threshold (£70,000).

VAT returns must be undertaken quarterly. VAT accounting must be completed by the end of the month following the relevant quarter e.g. VAT for the period 1st January to 31st March in a year is due by 30th April in that same year.

VAT records must be maintained. There are penalties for late VAT registration. The records must be kept up to date and preserved for six years. Copies of all VAT invoices, records of sale and records relevant to recovery must be kept. VAT invoices must be issued when making a supply to a VAT registered business.

Stamp Duty

Unlike in Ireland, the rates of stamp duty in commercial cases are almost identical to that in residential cases. It ranges from 0% to 4%.

0-£150,000.00	0%
£150,000.00 - £250,000.00	1%
£250,000.00 - £500,000.00	3%
Over £500,000.00	4%

Income Tax

The receipt of rental income in the UK will or may be taxable in the UK. Write offs are allowed for loan interest, repairs and other costs. There will be an obligation to make a rental income tax return by self assessment in the UK, unless an exemption is granted by HM Revenue. A tenant or an agent paying income out of the United Kingdom will have to deduct tax at the standard rate unless an exemption is granted by HM Revenue. Generally, Irish landlords who can show that they have no ultimate tax liability in the United Kingdom due to allowances, interest write offs and other expenses, may generally obtain exemption thereby allowing tax to be paid to the gross.

The receipt of rental income by an Irish resident individual is taxable in Ireland. The Irish rules will apply and it may be that interest and write-offs under the Irish rules mean that no net tax is payable. Any UK tax paid is credited against Irish tax so that in principle no more tax should be payable. No more income tax should be payable in the case of an English investment property than in the case of an Irish investment property unless in the particular circumstances the English tax is higher. The English rates are in fact broadly similar. The actual position would depend on circumstances.

Capital Gains Tax

Provided that the sale of an investment property is deemed to be a capital gain and not part of a trading pattern, a person or company which is not ordinarily resident in the UK will be exempt from UK Capital Gains Tax. If the individual is resident in Ireland he/she may be subject to Irish Capital Gains Tax. However, as with income tax the position would not be any different in respect of an investment property in Ireland.

Business Rates

Business rates are a local property tax equivalent to commercial rates in Ireland and are paid by the occupier. The owner can be liable for rates if there is no occupier or if the occupier defaults in payment. See our guide to Business rates in our Business brochures.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.