

# handy VAT tips for RPs

## Now more than ever before, businesses need to increase liquidity and cut costs without affecting their core services.

Although the economy is beginning to show signs of recovery, businesses continue to look for ways to decrease expenditure without affecting margins.

As VAT affects all housing associations, it is important to keep up with the technical changes to ensure that VAT recovery is maximised and the business is not exposed to assessments and penalties from HM Revenue & Customs (HMRC).

Have you reviewed your VAT costs? There are a number of areas in which registered providers of social housing (RPs) can potentially reclaim VAT or, through careful planning, avoid unnecessary charges.

### Looking to temporarily let unsold dwellings?

Many RPs may currently be looking to let new dwellings they have built or converted (from non-residential to residential) as they are struggling to achieve either a suitable outright sale or shared-ownership.

The sale or grant of a long lease (over 21 years) of new or certain converted dwellings is zero-rated for VAT purposes, giving rise to full VAT recovery for the builder. However, the letting of residential property is exempt from VAT, and a business that makes VAT exempt supplies is not usually entitled to recover VAT on costs incurred.

Therefore, VAT exempt temporary lettings may require house builders to:

- restrict VAT recovery on current and future VAT returns
- repay VAT previously reclaimed on returns already submitted (a one-off clawback adjustment)
- agree a special method with HMRC for recovering future VAT.

Some developers and RPs may be able to restructure their property ownership prior to granting a temporary letting so that a VAT clawback does not arise.

### HMRC's payback policy

Following a High Court decision which found in favour of Community Housing Association (CHA), HMRC issued a business briefing note confirming its policy regarding payback claims.

Under the payback provisions, where input VAT is not claimed as it relates to intended exempt supplies (e.g. residential letting), but is actually used to make taxable supplies, the input VAT may be claimed.

In the CHA case, the association initially incurred irrecoverable input VAT on costs relating to the construction of new dwellings intended for rental. Part way through, a new subsidiary was inserted and on the basis that the Court accepted that taxable supplies were made to the subsidiary, CHA was entitled to make a payback claim for the input VAT previously incurred.

As HMRC looks carefully at supplies between connected parties where the VAT position is uncertain, advice should be taken.

### Deposits for land on which dwellings are to be constructed

Last year, HMRC issued a business briefing note to clarify the VAT position in respect of deposits made at the time of exchange of contracts for land on which dwellings are to be constructed. In order to avoid the trigger of an exempt supply and to treat the supply as zero-rated, deposits are held by a stakeholder, with completion not taking place until what is commonly referred to as the 'golden brick scheme'.

HMRC has confirmed that, if it is clear at the time the deposit is released to the vendor that what will be supplied at completion, or at the time of the grant, will be partly completed dwellings (beyond 'golden brick'), then the deposit is part payment for the supply that will occur at that time. Therefore, even if the deposit is released to the vendor, it may be treated as zero-rated if the conditions for zero rating will be satisfied at the time of completion.

### Changes to the standard partial exemption method

Four changes were made to the standard partial exemption method from 1 April 2009. Three of these are optional and for most businesses will need to be implemented in the first VAT return following the end of their VAT year. The changes are summarised below and are certainly worth considering.

- RPs may use the previous year's annual recovery rate as the percentage that applies to each VAT return for the next year. An end of year adjustment will still need to be carried out.
- The end of year annual adjustment may be included in the last VAT return for the VAT year.
- Newly registered exempt businesses have the option to calculate input VAT recovery on the basis of use.
- The final change, which is compulsory, is that the method must include all 'relevant supplies', such as services to outside the UK.

These changes may present partially exempt RPs with cashflow advantages and operational savings.

In addition, HMRC is considering a new partial exemption framework for the social housing sector.

### New penalty system

Since introducing new penalty provisions in April 2008 for all major taxes, which applied to VAT returns submitted after 1 April 2009, HMRC has continued to add to the areas caught by penalties. A new concept of a 'suspended penalty' was also introduced where a penalty may be suspended if the business signs a declaration agreeing to certain conditions.

Under the new system, penalties are calculated by reference to the 'behaviour' of the business. If 'reasonable care' is taken when completing VAT returns, a penalty may not be applied even if there is an error.

HMRC may accept reasonable care has been taken if VAT advice was sought from an accountant or other professional adviser.

Errors which are 'careless' may be subject to a 30% penalty, and higher penalties will apply if the error appears to be deliberate.

Furthermore, errors adjusted on subsequent VAT returns because they are below the voluntary disclosure limit may still be liable to a penalty if not notified to HMRC.

### Zero-rating certificates: take care

The application of zero-rating certificates for new relevant residential or charitable buildings is being looked at closely by HMRC. Any incorrectly issued certificates may be subject to a penalty equal to 100% of the VAT.

As an example of this approach, HMRC has recently started querying the zero rating of new build relevant residential developments where the ground floor is used for non-residential purposes. HMRC may argue that the ground floor element should not qualify for zero rating as it may not be being used for a relevant charitable use either.

Much depends on the arrangements, but many RPs may have not considered this before and it could mean that zero-rating certificates have been issued incorrectly in the past.

As the Government is pressing for new housing developments to be more 'community' focused and to contain facilities for social and private use, HMRC's approach to the concept of 'use' may give rise to difficulties.

### Submit your VAT returns electronically

All registered businesses with an annual VAT exclusive turnover of £100,000 should have received a letter from HMRC confirming that VAT returns due from 1 April 2010 will need to be submitted online, with any payments made electronically. Any repayments due to the business will also be made electronically.

RPs with a turnover below £100,000 may also wish to take advantage of online filing which extends the due date for VAT returns and payments by up to seven days.

Please contact your usual Smith & Williamson VAT adviser if you wish to discuss any of these points further, or require any assistance.

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