

Your Legal Questions

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Q. I am about to purchase a commercial building and I have been told that VAT is going to be charged on the purchase price. Why is this?

A. The basic principle is that VAT is not payable in relation to the sale or purchase of property. There are however exceptions to the rule in relation to commercial properties. Where a commercial property has been recently built i.e. within the last 3 years, VAT will be automatically payable on any sale of the freehold. The buyer may then be able to recover any VAT depending on its own VAT status.

The second exception is where an election to waive exemption has been made. An election is made where the owner of property gives notice to the Revenue that he intends to charge VAT in respect of that property. This is also known as Opting to Tax. Once notice is served i.e. an election has been made, an owner can then charge VAT on the price of the property, if it sold or on the rent, if it is let. He can also recover VAT paid out, for example, on maintaining or improving the property. Such VAT is not normally recoverable unless the expenditure forms part of the day to day business of the owner.

Where the property is a rental investment property i.e. where it is tenanted, VAT may not be payable if it is sold to someone who intends to carry out the same type of business i.e. continue to let the property. This type of transaction is known as a transfer of a going concern and provided strict conditions are met, VAT is not chargeable. The treatment of VAT and commercial property is very complex and professional advice should be sought at the earliest opportunity.

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