CHAPTER 24

LAND AND BUILDINGS – EXEMPTION AND STANDARD-RATING

This chapter will look at the types of land and buildings which are exempt or standard-rated for VAT. Commercial buildings are either exempt or standard-rated.

24.1 The Basic Rule

Schedule 9 of VATA 1994 outlines supplies which are exempt from VAT. The category that covers land and buildings is Group 1 – Land.

\[ \text{VATA 1994, Sch 9, Group 1} \]

"The grant of any interest in or right over land or of any licence to occupy land, other than............ is exempt".

The ‘other than...........’ refers to a list of standard-rated supplies. Basically the grant of any interest in or right over land other than those listed in Group 1 is exempt.

The list of standard-rated items within Group 1 is one of the few occasions that the legislation specifies standard-rated supplies.

Consequently, if a land transaction is not within Schedule 8, Group 5 (zero-rated) or Sch 7A Groups 6 and 7, or the list of standard-rated items within Schedule 9, Group 1, it will be exempt.

The items listed and hence standard-rated are:

- the grant of any interest, right or licence consisting of a right to take game or fish;
- the provision of accommodation in a hotel, inn, boarding house or similar establishment of sleeping accommodation;
- the grant of any interest in, right over or licence to occupy holiday accommodation;
- the provision of seasonal pitches for caravans and the provision of pitches for tents or camping facilities;
- the grant of facilities for parking vehicles; and
- the grant of any right to occupy a box, seat or other accommodation at a sports ground, theatre, concert hall or other place of entertainment.
- the grant of self-storage facilities (from 1 October 2012)
- the rental of hairdressers' chairs (from 1 October 2012).

The main item listed in Group 1 is item number 1(a) and it says the following:
“The grant of a fee simple in
i. a building which has not been completed and which is neither designed as a
dwelling or a number of dwellings, nor intended for use solely for a relevant
residential purpose or a relevant charitable purpose; or

ii. a new building which is neither designed as a dwelling or a number of
dwellings, nor intended for use solely for a relevant residential purpose or a
relevant charitable purpose after the grant.”

A fee simple is a freehold.

In other words either:

i. a freehold commercial building which has not yet been completed; or

ii. a new freehold commercial building.

Consequently the sale of the freehold in an uncompleted commercial building or
a new commercial building will be standard-rated.

A building is “new” if it was completed less than 3 years before the grant.
VATA 1994, Sch 9, Group 1 Note 4

It is important to appreciate that the lease of a commercial property is not within
the list of standard-rated items in Group 1. Consequently any premium and/or
rental income in respect of a commercial property, will be exempt, subject to an
option to tax.

Example 1

Are the following supplies standard-rated, zero-rated or exempt?

<table>
<thead>
<tr>
<th></th>
<th>S.R</th>
<th>Z.R</th>
<th>Exempt</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The sale of the freehold of a 2 year old office block</td>
<td></td>
<td></td>
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<tr>
<td>2.</td>
<td>The grant of a 99 year lease in a brand new factory.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>The sale of the freehold of a 5 year old factory.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>A farmer rents out a plot of land to another farmer.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

24.2 Supplies Between Landlords and Tenants

1. Lease Payments

* Inducements  HMRC Brief 12/05

HMRC accept that inducement payments made to prospective tenants are outside the scope of VAT. The signing of a new lease is not considered
to be giving anything in return for the inducement. Hence there is not a VAT supply and the inducement is outside the scope of VAT.

If the tenant was obliged to give something in return then there would be a VAT supply. The supply would not fall within the land exemption as the prospective tenant does not have an interest in the land. The supply would be standard-rated by default, i.e. not in Sch 8, Sch 7A or Sch 9.

Examples of such a situation is where the tenant was obliged to refurbish the property or the tenant allowed its name to be used in marketing the remainder of the property.

2. Service Charges, etc.

The VAT treatment of service charges and other payments relating to premises depends upon the nature of the property and the terms of the arrangements. This will be particularly relevant when considering serviced offices.

General services for tenants of leasehold non-domestic property provided by the landlord.

Leases often stipulate that the landlord will provide, and the tenants pay for, the services required for the upkeep of the building as a whole. The lease may provide for an inclusive rental or it may require the tenants to contribute by means of an additional charge to the basic rent, generally referred to as a service or maintenance charge.

This service charge assumes the same VAT liability as the premium or rent payable under the lease.

The service charge is therefore generally exempt unless the landlord has “opted to tax” the property or the underlying lease is standard-rated, e.g. holiday or time share accommodation. VAT Notice 742, Paras 11.1, 11.2, 11.4
Example 2

Below are four transactions involving land and buildings. State whether each is a standard-rated, zero-rated or exempt supply for VAT.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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<th></th>
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<tbody>
<tr>
<td>S.R</td>
<td>Z.R</td>
<td>Exempt</td>
</tr>
<tr>
<td>1. A factory owner grants a 5 year lease over one quarter of his one year old factory to another business.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Wimpy Homes sells the freehold of a 20 year old house it purchased as a part-exchange deal with a customer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. JC Ltd sells the freehold of a 1 year old office block.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. JC Ltd sells the freehold of a 4 year old office block.</td>
<td></td>
<td></td>
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</tbody>
</table>
ANSWERS

Answer 1

<table>
<thead>
<tr>
<th>S.R</th>
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</table>

1. The sale of the freehold of a 2 year old office block
   - Yes
   - No
   - No

2. The grant of a 99 year lease in a brand new factory.
   - No
   - No
   - Yes

3. The sale of the freehold of a 5 year old factory.
   - No
   - No
   - Yes

4. A farmer rents out a plot of land to another farmer.
   - No
   - No
   - Yes

The sale of the freehold of a 2 year old office block – two years of age means it is **new** and so this is a standard-rated supply.

The grant of a 99-year lease in a brand new factory. A factory is commercial. It is “new” but it is not a supply of the freehold – instead the grant of a lease. This is not a standard-rated supply and because it is commercial property it is therefore an **exempt** supply.

The sale of the freehold of a 5-year old factory – a factory is commercial, it is freehold, but it is **not “new”**. Therefore it is an exempt supply.

A farmer rents out a plot of land to another farmer. It is **not domestic** so it is not zero-rated. It is **not new, commercial, freehold**, so it is not standard-rated. Therefore this must be an exempt supply.
### Answer 2

<table>
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<tbody>
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<td>1. A factory owner grants a 5 year lease over one quarter of his one year old factory to another business.</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>2. Wimpy Homes sells the freehold of a 20 year old house it purchased as a part-exchange deal with a customer.</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>3. JC Ltd sells the freehold of a 1 year old office block.</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>4. JC Ltd sells the freehold of a 4 year old office block.</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
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A factory owner grants a five year lease over one-quarter of his one year old factory to another business. A factory is a commercial property and the word "lease" indicates it is an exempt supply.

Wimpy Homes sells the freehold of a 20 year old house which it purchased as a part-exchange deal with a customer. Some domestic property is zero-rated, i.e. basically houses that are brand new and are being sold by the constructor. This house is not brand new, it is 20 years old. Wimpy Homes did not build it – so it is not a zero-rated supply. It cannot be standard-rated because that only applies to commercial property, so therefore it is an exempt supply.

JC Ltd sells the freehold of a 1 year old office block – it is freehold, commercial and new, so it is standard-rated.

JC Ltd sells the freehold of a 4 year old office block – it is freehold, commercial but it is old, so this is an exempt supply.