



Law Society
of Scotland

Consultation response

Simplifying the VAT Land Exemption – call for evidence

August 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to respond to HMRC's call for evidence on *Simplifying the VAT Land Exemption*¹. We have the following comments to put forward for consideration.

Consultation questions

1. What is your experience of the VAT rules on land and property?

The VAT rules on land and property have been in place for a long time and are generally well understood and do not cause undue concern or complication. As a result, we would be loath to see wholesale changes. Improvements in guidance and interaction by HMRC with taxpayers and advisers would achieve a better outcome than a complete rewrite of the legislation.

2. Are there any supplies that are particularly difficult to establish the correct liability for, leading to financial and administrative burdens? Please explain.

It is sometimes difficult to establish the position with:

- The anti-avoidance rules for the option to tax, consideration of which can be a disproportionate burden in many cases where a commercial property occupier agrees to pay for certain internal works (e.g. installation of additional electric floor boxes). The rules also give rise to a circularity recognised in HMRC's guidance and that really should be legislatively fixed.
- Short-term arrangements such as trading concessions, serviced offices, conference facilities, the hire of a hall etc, which may or may not be primarily of facilities rather than a licence to occupy.
- Works on a site that incorporates both opted commercial and residential use, such as student accommodation with ground floor retail or leisure. In particular, how to attribute costs between the underlying land and the development that sits on top of it; and of the development as between residential and commercial.

¹ <https://www.gov.uk/government/consultations/call-for-evidence-simplifying-the-vat-land-exemption>

Other areas of concern arise largely because HMRC's position is not known. Currently, these include:

- Dilapidations
- Call options
- Overage

3. Do you think that the land and property VAT rules require simplification? Please explain why.

While there may be certain areas of complexity, these are relatively small and would not warrant a wholesale rewrite suggested by the Call for Evidence.

These areas would include processing an application for registration, or a notification of an option to tax; zero-rating, RRP/RCP buildings, TOGC treatment, or the CGS, some of which includes wider VAT issues than land and property.

As noted above, our members feel it is their experience of the VAT system as a whole (of which the rules are but a part) that would benefit from greater certainty and administrative simplicity.

4. What are your views on the options presented in the OTS report outlined above? Do you agree with their assessment?

We consider the OTS was right to reject these ideas. We would comment on the following specific suggestions as follows:

(a) Removing the ability to opt and making all relevant transactions exempt

This would result in significantly increased costs for landlords and developers, and therefore also for tenants. The measure would also increase uncertainty.

(b) Removing the option to tax and making all land and property taxable at a reduced rate

The impact would really depend on what the reduced rate was – whether, say, it was 5% or 15% – but there would be additional costs for many tenants, even if residential lettings were excluded.

Like a), the measure would also increase uncertainty, particularly whether or not a supply was to be treated as a property supply.

c) Making all commercial land and property taxable at the standard rate with an option to exempt

If the option to exempt was generally available, this would be little different from the current regime, except the need would be to confirm that an option for exemption, rather than an option to tax, had been exercised. The work involved in making the switch appears difficult to justify.

5. What are the advantages and disadvantages of making all minor and short-term interests in land and property subject to VAT?

We are not sure what is meant by “short-term” but, in any event, do not believe it would lead to simplification. Indeed, the transitional provisions that would be necessary would increase the complexity.

6. How should a minor and short-term interest be defined?

There might be merit in excluding the shortest of lettings, though as noted above complexity can quickly arise.

7. What are your views on the option to make supplies of land and property subject to VAT apart from certain specified exceptions?

This idea would result in additional VAT, stamp tax and compliance costs for a large number of businesses and should not be taken forward for that reason. Disadvantages would be similar to those outlined at question 5.

8. Which particular supplies of land and property should continue to be exempt from VAT if this option were to be considered further?

We do not consider this option should be considered further.

9. Are there any supplies that should be subject to VAT that are currently exempt or vice versa?

No.

10. What are your views of linking the VAT liability of interests in land to those recorded in Land Registers in England, Scotland, Wales and Northern Ireland?

Because of the different legal systems on which registration depends, we consider this would create significant uncertainty and disparity between what are similar transactions undertaken in different jurisdictions. This should not be the case for a UK wide tax.

11. What are the potential advantages and disadvantages of such an approach?

See our answer to Q10.

12. Do you have any other suggestions on how the land and property VAT rules could be simplified?

Simplicity should only be part of the target outcome. A better experience for taxpayers and clarity for HMRC is equally important. Much of this comes down to providing greater certainty, whether this results in shorter or longer legislation. To that end we would suggest:

- Basing SDLT, LBTT and LTT on the price excluding any VAT. For most businesses, this would remove the main driver for ensuring that acquisitions could be treated as TOGCs, or as exempt.
- Extending recovery of pre-registration VAT.

More radically, an optional reverse charge for property transactions, allowing the buyer to account for any VAT.

13. Would you prefer to keep the VAT rules on land and property as they are? If so, please explain.

The current rules are in our view better than the apparent proposals.

Specific changes are desirable, but we do not consider wholesale changes would improve the position.

For further information, please contact:

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