tech bite

odyssey

vat & commercial property

It is frequently the case that a commercial property will be subject to VAT which can have the effect of increasing the purchase price. The trustees of a pension scheme can decide to register the pension scheme for VAT to reclaim the VAT expenditure on the purchase. It is common for trustees to do this, although the consequence of doing so will be that the rent will then be subject to VAT, as will any future sale of the property.

Where to start

It is important to try and identify as early as possible whether a commercial property transaction is subject to VAT. This may be immediately obvious: for example, in the sale particulars of the property in question, or because the pension scheme is acquiring the property from a connected party and they are aware of the status of the property in question. In some instances, however, especially where purchasing from a third party, the position may not be clear at outset. This can have implications because where the pension scheme is to register for VAT as a consequence of the status of the property, time delays can occur that can affect the property purchase.

Registering for VAT

The decision to register for VAT normally results from the fact that a property being acquired is subject to VAT. By registering for VAT a pension scheme is able to reclaim the VAT on the purchase price and associated costs and, going forward, on all property-related expenditure that is subject to VAT. In registering, however, the pension scheme will be required to charge VAT on any supply they make of the property in question. In other words, VAT must be applied to the rent charged and also on the future sale of the property. This can have the effect of making the property less attractive to potential tenants or purchasers unless they also are registered for VAT.

Where the pension scheme trustees elect not to register the pension scheme for VAT, they would pay the resultant VAT on the purchase price, but then future supplies of the property would not be subject to VAT.

Another reason why pension schemes may register for VAT is where there is major development or refurbishment work being considered for a property. Registration will allow the pension scheme to reclaim the VAT on the work undertaken on the property, which can be significant. Conversely, as before, the pension scheme will then be obligated to charge VAT on the rent of the finished property, and on its future sale.

The decision to register for VAT is essentially a commercial one and Members should seek specialist advice as necessary.

How does the process work

There are two separate but related aspects to registering for VAT. The pension scheme must firstly register for VAT, enabling the pension scheme to make supplies of a VAT-opted property. Where there are multiple pension schemes, or parties, involved in a purchase, each will become a 'partner' of the VAT registration. In other words, a single VAT registration will apply to the collective group.

The second element to the process is opting to tax an interest in the commercial property in question. This must be done in conjunction with the registration process, unless the pension scheme has already been registered for VAT. It is only the VAT-opted properties that are subject to VAT; properties that are not VAT-opted are not subject to VAT on rent or sale.

What are the timescales

For the option to tax to be valid it must normally be made within 30 days of the decision being made, though HMRC does have some discretion to allow for belated applications. As the registration of the pension scheme is voluntary, it is usual for the timing of both the registration and the option to tax to coincide and be based around the time that the property purchase (or change of ownership, for example in a pension transfer) is expected to complete.

Although HMRC should make the registration and option applicable from the requested dates, the physical confirmation can take a number of weeks to be received. This may delay property purchases or transfers, as solicitors will normally advise Trustees to wait until they have received the confirmation from HMRC before finalising the transaction. It is therefore important to get the process underway as soon as possible.

Transfers of Going Concern

In the context of pension schemes, a transfer of going concern (TOGC) can occur where a VAT-opted property is to be transferred which is subject to an existing tenancy. In these situations, the VAT does not physically have to be paid and reclaimed and is ignored for the purposes of financing the transaction.

It is important to remember, however, that the registration and option to tax processes must still be undertaken, and HMRC informed that the intended transaction will be subject to TOGC provisions. Where the property is vacant, or where there is no lease in place (for example, a property owned and tenanted by the same party), TOGC provisions will not apply.

Ongoing Administration

Once registered, the pension scheme must file regular quarterly returns to HMRC, accounting for VAT inputs and outputs that relate to the VAT-opted properties it owns.