



HM Revenue
& Customs

Simplifying the VAT Land Exemption

Summary of responses

30 November 2021

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1. Introduction

The Government wants UK businesses to operate in the best possible environment whilst remaining both productive and competitive. The Office of Tax Simplification (OTS) report on VAT (*Value added tax: routes to simplification*) in 2017 highlighted the complexity of the existing VAT rules including those relating to land and property.

In May, the Government launched a call for evidence to assess potential options for simplifying the land and property VAT exemption. The call for evidence sought opinion on the current VAT rules related to land and property. Respondents were also invited to share their views on the potential options for simplification that were presented, as well as providing any other ideas that were not included.

The call for evidence was split into two distinct sections and intended to gather evidence in each of these areas.

- The first section (chapter 2) considered the factors that are driving the need for simplification.
- The second section (chapter 3) discussed the possible solutions for the problems created by the current VAT rules on land and property.

The call for evidence closed in August with a total of 73 responses. There was a good range of respondents, with contributions from businesses, trade bodies, tax advisers and individuals. The Government is grateful to all those who took the time to respond.

Where responses were received which covered subjects outside the scope of the call for evidence, these were noted and may be considered as part of any future reviews of this area.

This document will provide a summary of these responses. For the Government's response to the contributions received in the call for evidence, please see the 'Next Steps' section.

2. Responses

General comments

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

Nearly all respondents had valuable experience with the VAT rules on land and property, including those responding on behalf of members or clients. Most respondents used this question as an opportunity to introduce their line of work before describing the scope of their interaction with the VAT rules on land and property. Notably, most respondents engaged with this area of VAT on a daily basis.

In many instances, respondents used this question to introduce their overall opinion on the effectiveness of the current VAT rules on land and property. Responses differed greatly, with opinion ranging from the belief that the current rules are understood and work well to the assertion that the rules are unnecessarily complex and require urgent simplification. On balance, a majority of respondents urged caution over sweeping changes to the current rules, favouring more targeted attempts at simplification in specific areas of land and property VAT.

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

There was a wide range of responses to this question, with most respondents able to identify several supplies that they felt it was difficult to establish VAT liability for. The single most common remark involved the anti-avoidance rules for the option to tax, which was mentioned by over 25 per cent of respondents. Other aspects of the option to tax also attracted interest, with several respondents referring to situations where there is no direct record of an option to tax.

Beyond this, other areas that attracted several acknowledgements in response to question 2 included:

- Short-term arrangements, such as trading concessions, serviced offices and conference facilities, where it is unclear if the supply should be treated as a property letting or as the provision of facilities.
- Mixed-use developments that include both commercial and residential areas, such as student accommodation with ground floor retail.

- The rules surrounding overage, rights to light, call options and dilapidations where HMRC's guidance and overall position is said to be unclear.

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

Most responses to this question were in favour of some simplification to existing VAT rules. This was generally expressed in two distinct ways: either the respondent picked out the specific area they wanted to see simplification in, or they stated that they only wanted to see some focused changes. Several respondents urged against a major overhaul that could disrupt the existing system and cause more confusion.

There was also notable opposition to simplification, with some respondents suggesting that they were comfortable with the current system because it continues to work well in most instances. Others commented that it would be more beneficial for HMRC to improve consistency in its application of the existing rules.

Ideas previously identified

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

The OTS report highlighted several potential options for simplifying the VAT treatment of land and property. Three of the options considered were rejected for various reasons:

- *Removing the ability to opt and making all relevant transactions exempt* was rejected because some construction services would still be standard rated, leaving an irrecoverable amount of VAT for property owning taxpayers. The OTS found that this could have an impact on productivity.
- *Removing the option to tax and making all land and property taxable at a reduced rate* was rejected as it could lead to revenue loss for occupiers who would not be able to recover all their VAT. As a result, the OTS find that if a reduced rate were to apply for residential dwellings, there would be an increased cost to the consumer or a reduction in the profit to the developer.
- *Making all commercial land and property taxable at the standard rate with an option to exempt* was rejected due to the considerable

administrative effort and financial cost that this option would impose on both HMRC and businesses.

An overwhelming majority of the responses to question 4 rejected all three of the options outlined by the OTS, with respondents regularly stating that the OTS were correct in their decision to discount these proposals.

Simplifying VAT on land by defining short-term or minor interests as subject to VAT

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

Opinion on this question was divided, with most respondents able to identify both advantages and disadvantages to defining minor and short-term interests. There was a very similar degree of support and opposition to this proposal, although a greater range of potential disadvantages was established by respondents. Those in support tended to suggest that defining minor and short-term interests would offer more certainty, whilst those in opposition believed that changes could result in new confusion and further complexity.

Several respondents demonstrated cautious interest in their response to this proposal, stating that its success would depend entirely on the definitions adopted and questioning how this could be fairly decided on. Notably, a small number of respondents refused to comment in the absence of more detailed proposals.

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

Only a limited number of respondents to this question put forward a clear suggestion for how a minor and a short-term interest could be defined. There was no consensus between these responses for any one option.

Several respondents suggested that any definition would need to be well thought out and duly requested full consultation and continued engagement on the matter.

In opposition, some respondents refused to comment on the basis that the question presupposes that the idea of defining a minor and short-term interest is a good one in the first instance. Others indicated that a definition would be difficult or even impossible to establish.

Simplifying VAT on land by making most supplies subject to VAT, and exempting specific supplies

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

A clear majority of respondents opposed this proposal. The most common reason cited was due to the likelihood that it would create significant additional costs for a large number of businesses, with respondents often citing irrecoverable VAT and new compliance costs. The second most popular reasoning for rejecting this suggestion was concerns over losing the flexibility provided by current legislation, with some respondents arguing that this would be detrimental to businesses and taxpayers.

A small number of respondents expressed full support. A similar number of responses demonstrated more cautious support, stating that there would be “some positives”. Notably, several respondents were keen to point out that any exceptions would need to be very tightly defined to prevent borderline cases and litigation which, in their opinion, would simply lead to increasing complexity.

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

Responses to this question were evenly split. A significant number of respondents suggested that there should be no change to the existing rules, often stating that changes would result in additional costs or more confusion for businesses. Some respondents refused to comment on this question in accordance with their belief that this option should not be considered further.

An equivalent number of responses put forward suggestions for supplies that should continue to be exempt from VAT. Most of these responses included at least one or all the following three supplies: relevant residential purpose properties, relevant charitable properties and dwellings.

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

Responses to this question were split. There were more instances where a respondent was able to put forward a supply that they thought should have a different VAT treatment. However, these suggestions tended to be

business or industry specific and widespread, meaning that there was no meaningful agreement around any option.

On the contrary, several respondents indicated that the current rules should not change or simply stated that they had no suggestions to make. This question seemed to attract much less interest when compared to the other questions included in the call for evidence, with a noticeably higher number of respondents simply choosing not to answer this question.

VAT Liability linked to Land Registry

Question 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?

A clear majority of respondents had a negative view of this proposal, clearly stating that they do not recommend this approach.

Several respondents used this question to suggest an alternative approach: there was significant support for a dedicated online database or register which a) links VAT liability of interests with other tax matters and b) remains widely accessible.

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

In line with the responses to the previous question, respondents were able to identify a wide range of potential disadvantages to linking the VAT liability of interest in land with Land Registers. The most prominent concerns were that this option would result in a loss of flexibility for owners when compared to current rules, whilst others argued that VAT is based on beneficial interest and not legal interest.

A small number of responses found that this option would provide certainty by providing information on the VAT treatment of any property.

Other suggestions

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

This question attracted considerable interest and was answered by nearly all respondents. Most responses included a multitude of options, often

referring to suggestions that they had already introduced in previous answers.

Amongst a large variety of options, suggestions could be loosely grouped to identify several areas that appeared to attract the most interest. From this, responses that referenced the Option to Tax were most prevalent, with respondents almost exclusively focusing on a) the associated anti-avoidance legislation, b) the need for some form of 'real time' accessible public record of the land and properties that had been previously opted and c) shortening the Option to Tax revocation period from 20 to 10 years.

There was also focus on the inadequacy of HMRC's current guidance, as well as inconsistency in its application of existing rules. Several responses attributed these problems to poor record keeping and the use of unsatisfactory examples in guidance.

Other areas that attracted notable interest included Stamp Duty Land Tax and its interaction with VAT, the VAT treatment of assessments and requests to change the VAT treatment of particular supplies to the zero or reduced rate.

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

This question produced a similar response to question 3. Most respondents favoured keeping the VAT rules on land and property broadly as they are. To demonstrate this, respondents either explicitly rejected any sweeping changes or stated that they wanted rules to stay the same subject to some targeted simplification or improvements. Several others signalled that the existing rules were vastly preferable to any of the options presented in the call for evidence.

There was noticeably less support for significant changes. Only a handful of responses made it clear that they supported major overhaul of the current system to deliver simplification, often citing the complexity of existing rules.

Some respondents produced more of a middle-ground answer. In some instances, respondents stated that they could see the potential advantages but also expressed reservations. Others took the opportunity to suggest that resources would be better allocated on providing a dedicated online database that was accessible to all or improving the existing HMRC guidance.

3. Next steps

The Government is grateful for the informative responses to this call for evidence. The respondents have illustrated a range of views and reservations, including concerns about how any significant change would be implemented fairly.

After analysing the responses to the call for evidence, the Government does not intend to take any further action regarding any of the potential options previously discounted by the OTS. The Government agrees with the OTS and respondents that these options would likely be ineffective in reducing complexity overall.

The Government also agrees with respondents that the potential option of linking the VAT treatment to an independent land register would be ineffective, and probably inoperable, and will therefore not be considering this further.

Improved guidance

A significant number of respondents to the call for evidence highlighted that much uncertainty and delay could be removed for businesses and advisors if there was better guidance available on a number of subjects. Most commonly mentioned were issues such as dilapidations, overages, call options and rights of light.

HMRC acknowledge that guidance could be significantly improved in these areas and has set up a working group with members of the Land and Property Liaison Group with the aim of producing guidance for HMRC compliance officers that will also provide certainty for businesses.

The updated guidance relating to dilapidation payments is due to be published early next year. On overages, the joint working group is already working to produce updated guidance for officers and businesses to follow.

There is already some guidance available on call options, which has not changed. However, HMRC's position in some specific cases, including those in litigation, has created uncertainty and doubt. HMRC is currently considering this and will provide clarification in the new year.

Work on providing guidance on rights of light has not started yet. HMRC intends to engage with the working group on this issue once sufficient progress has been made on the other areas mentioned above.

Further stakeholder engagement

HMRC recognises that any significant changes to the VAT rules would require considerable further consultation and sufficient lead in times and transitional rules.

We also acknowledge that there are potentially unknown consequences to each potential option that we would need to explore further.

A number of respondents expressed an interest in discussing further the implications of certain proposals, and we intend to explore these with relevant stakeholders on that basis.

In particular, we would like to explore further whether it is possible to establish a workable definition of “short term” or “minor interests” with a view to making such supplies subject to VAT. If establishing such a definition is possible, we would like to discuss further the implications of making such a change.

Likewise, the Government would like to discuss further the implications of making most supplies of land subject to VAT with a limited number of exceptions. This is by far the most significant change of the potential options. However, it would also be the most challenging to develop and introduce in the short to medium term, and the Government would like to understand more fully these challenges and any unintended consequences before making any decisions.

At this point, no decisions have been made as to which option, if any, will be taken further. As part of the continued engagement, we may also look to discuss other suggestions raised by respondents. These included the request for HMRC to establish a more comprehensive and accessible register of existing options to tax and reviewing the anti-avoidance rules relating to the option to tax.

Further discussions with businesses are intended to begin in the early part of 2022.

Annexe A: List of Organisations and stakeholders who responded to the call for evidence

The respondents to this call for evidence were:

Trade Bodies	Individual Business	Tax Advisors	Individuals
British Universities Finance Directors Group	Newable Limited	Mark Peters VAT Associates Limited	We received 6 responses from individuals
The Institute of Chartered Accountants in England and Wales	National Trust	Field Fisher	
Association of Taxation Technicians	Willmott Dixan	Grant Thornton	
National Housing Federation	Taylor Wimpey UK Limited	Haysmacintyre LLP	
British Property Federation	Savills(UK) Ltd	Gerald Edelman	
Charity Tax Group	Hyde Group Housing	Pinsent Masons	
Law Society	MG plc	Crowe UK LLP	
Scottish Land&Estates	IQ Student accommodation	BDO	
The Chartered Institute of Public Finance & Accountancy	M&G Plc	PricewaterhouseCoopers LLP	
National Farmers Union	Aviva	Delloite	
Land Promoters and Developers Federation	London & Quadrant Housing Trust	RSM UK	
Institute Chartered Accountants Scotland	United Utilities	KLgates	
Country Land and Business Association	Howard Kenedy LLP	Grant Thornton UK LLP	
Chartered Institute of Taxation	Schroeder	ConsultantsAdvisers	
Law Society of Scotland	Veolia	Saffery Champness	
VAT Practitioners Group	Churchill Retirement Plc	ErnstYoung	
	Bushmead Homes Limited	Scammell & Nyland Ltd	
	Barratt Developments	Mazars	
	Berkeley Group		
	Legal and General		
	Entain Plc		
	Grosvenor		

	AWG group Ltd		
	Travers Smith		
	Anchor		
	Ashurst		
	Vistry Group		
	Bellway		
	British Land		
	Grainger Plc		
	HS2 Ltd		
	Osbourne Clarke		
	Lifestory Group		
Total: 16	Total: 33	Total: 18	Total: 6
Total: 73			