



HM Revenue
& Customs

Simplifying the VAT Land Exemption – call for evidence

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1. Introduction

- 1.1. The Office of Tax Simplification (OTS) VAT review was published in 2017 and included recommendations for the simplification of the VAT treatment of land and property. On 23 March 2021 the Government announced the launch of a call for evidence to look at potential options and ideas to simplify the land and property VAT exemptions.
- 1.2. The Government wants UK businesses to operate in the best possible environment and remain both productive and competitive.
- 1.3. Whilst it is important that businesses comply with their tax obligations, HMRC acknowledges the complexity of the existing VAT rules on land and property and would like to hear views from businesses on the practical application of the current rules, and whether these rules could be simplified.
- 1.4. The purpose of this call for evidence is to seek opinions on the current VAT rules related to land and property. Businesses are invited to share their views on the simplification of these rules, both in response to the potential options presented in this document, and any new ideas that are not considered here.
- 1.5. This call for evidence is split into two sections:
 - The first section (see Chapter 2), looks at the history of the VAT land and property rules, highlighting how they have become increasingly complex over time. It considers factors that are driving the need for simplification.
 - The second section (see Chapter 3), discusses possible solutions for the issues caused by the current complicated nature of the VAT rules for land and property.

2. VAT rules for land and property and drivers for simplification

2.1.1. The land exemption

- 2.1.2. The original VAT exemption made supplies of land and property exempt from VAT, apart from a few exceptions which remained taxable, and so subject to VAT. The original legislation included just four exceptions to the exemption to address some relatively simple circumstances involving the supply of land¹.
- 2.1.3. Over the years the amount of legislation has increased, and the land VAT exemption now contains fifteen exceptions and twenty-six sets of notes.²
- 2.1.4. As a result, some businesses can be required to make several separate decisions before the VAT liability of their supply can be established. For example, once a business has established that it is supplying land rather than facilities, it may then have to consider whether that supply falls within one of the exceptions to the exemption. If it does fall within one of the exceptions, it then has to consider a number of conditions to establish whether it is excluded from that exception.
- 2.1.5. This means that businesses may spend a disproportionate amount of time and/or money in order to establish the correct liability of their supplies. This can also cause additional burdens for HMRC to assure compliance of these businesses.
- 2.1.6. A number of tax advisers have commented on the complexity of the land and property VAT exemption. In particular The British Property Federation stated;
- “Applying VAT in a real estate context can be particularly complicated. A range of different rates and exemptions can apply depending on the facts and circumstances of individual situations and the precise treatment of a transaction or project is often open to interpretation. Greater clarity in the application of VAT is needed to support real estate investment, and the jobs and economic growth it delivers.”³

¹ Finance Act 1972, Schedule 5, Group 1, Items 1(a – d). Exceptions – hotels, inns or similar establishments, facilities for camping in tents or caravans, facilities for parking vehicles, the grant of a right to take game or fish.

² VALUE ADDED TAX Act 1994 Schedule 9 Group 1 – LAND, Item 1 and corresponding Notes

³ British Property Federation, Submission to the Treasury Select Committee inquiry into VAT – May 2018. See Executive Summary paragraph 2

2.2.1 The Option to Tax

- 2.2.2 The option to tax legislation enables a business to tax some supplies of land that would otherwise be treated as exempt from VAT. The usual rationale behind making such a choice is to be able to recover the VAT incurred on costs and overheads of a business, or to meet the conditions of a Transfer of a Going Concern (which allows a business to be sold without the addition of VAT).
- 2.2.3 Although the option to tax is voluntary, the administrative burden can be considerable for businesses, with many incurring the additional cost of engaging external advisors when buying or selling a property interest.
- 2.2.4 The option to tax legislation also contains extensive anti-avoidance legislation which is not always easy to understand and adds another layer of complexity.
- 2.2.5 Some businesses are unaware of whether a property they are purchasing has been opted to tax by the seller, as there is no facility for them to check this. This can lead to uncertainty over the true final selling price of a property.
- 2.2.6 Other businesses incorrectly assume that if they acquire an opted property, they can continue to make taxable supplies of their interests in the property even if they themselves have not notified HMRC of an option to tax, leading to administrative burdens and uncertainty further down the line.

2.3.1 What the OTS have said on simplification

- 2.3.2 In November 2017, the Office of Tax Simplification (OTS) published its report, 'Value Added Tax: Routes to Simplification' which highlighted the complexity of current VAT legislation.
- 2.3.3 The OTS highlighted two broad factors that contribute to the complexity inherent in a system with multiple VAT rates. The two factors are:
- (1) the changes in government policy since 1973 that have not necessarily been reflected in the scope of the exemptions, and;⁴
 - (2) the VAT system itself not always keeping up to date with social, economic and technological changes.⁵

⁴ OTS Report - Value Added Tax – Routes to Simplification, November 2017. Chapter 3.5.1, page 39.

⁵ OTS Report - Value Added Tax – Routes to Simplification, November 2017. Chapter 3.5.2, page 39.

2.3.4 Although these observations were focussed on the general effect of having multiple rates of VAT, they are equally applicable to the VAT rules on land and property. The cumulative changes over the years, which have been made to address specific circumstances, have led to increased complexity overall.

2.4.1 **Small and medium businesses**

2.4.2 Small and medium businesses that responded to the call for evidence on the VAT Registration Threshold (October 2018) identified that one of the complexities of the current VAT system is establishing the correct VAT liability for their supplies.⁶ It was noted that these businesses were frequently unable to afford professional advice and feared incurring penalties for applying the wrong VAT rate highlighting that the current regime is complex.

2.4.3 Simplification of the VAT rules on land and property could go some way to help alleviate these issues, and potentially reduce costs incurred by businesses.

2.5.1 **Other factors**

2.5.2 Other factors that contribute to the complexity of the land and property VAT exemption include-

- The development of new markets and services that did not exist when VAT was introduced,
- The impact of precedent case law (both UK and EU), and
- The uncertainty around establishing when an exempt supply of land becomes a taxable supply of facilities.

Questions

1. What is your experience of the VAT rules on land and property?
2. Are there any supplies that are particularly difficult to establish the correct liability for, leading to financial and administrative burdens? Please explain.
3. Do you think that the land and property VAT rules require simplification? Please explain why.

⁶ HM Treasury – VAT Registration Threshold – Summary of Responses. October 2018. Chapter 3.9, page 7.

3. Ideas for simplification

3.1.1. Ideas previously identified

3.1.2 The OTS report highlighted a number of potential options for simplifying the VAT treatment of land and property. However, problems were identified with each of these options, and as a result they were rejected by the OTS in the report.

Three of the options considered and rejected by the OTS, are shown below, including their analysis.

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

This would simplify the land and property schedule significantly. However, construction services would still be standard rated, causing an irrecoverable amount of VAT for property owning taxpayers. This might have an effect on productivity as these taxpayers would have to fund the irrecoverable VAT, potentially reducing the overall level of property construction projects. In addition, if the exemption included new domestic dwellings, it would increase their cost, as there would be an irrecoverable amount of VAT by residential developers. ⁷

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

This would be simple, with one rate of VAT for all property transactions. Occupiers who cannot reclaim all their VAT would suffer less irrecoverable VAT, leading to potential revenue loss. If a reduced rate were to apply to residential dwellings, this would offset any potential revenue loss but there could be an increased cost to the consumer or a reduction in profit to the developer as a result. ⁸

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

Automatic standard rating would take away the need for an acknowledgement of the option to tax required by legal teams when completing property transactions. A new data base would have to be set up to capture the options to exempt. Unpicking the existing system would involve considerable administrative effort and cost for both HMRC and businesses. ⁹

3.1.3 We would welcome the views of businesses on the above options.

Questions

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

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

3.2.2 In some cases, land transactions that are essentially identical in nature are being treated differently for VAT purposes, due to businesses interpreting the facts of their respective cases differently. This, coupled with frequent litigation, means that the borderlines of the land exemption have become increasingly unclear.

3.2.3 This contributes to greater uncertainty and complexity when businesses try to establish the correct VAT liability of their supplies. The boundaries between exempt interests in land and the taxable supply of facilities, as well as those between single and separate supplies have also become blurred.

3.2.4 Establishing the correct VAT liability for supplies of land with any degree of certainty has therefore become difficult for some taxpayers.

3.2.5 To overcome this, a trade body in its response to the Treasury Select Committee suggested making all “short-term” interests in land taxable. The trade body saw the benefit being that –

“... disagreements and uncertainty over the exact nature of what is provided, or whether an element of service attaches to the land supplied, are irrelevant to the VAT analysis thereby simplifying decision making within a business.”¹⁰

3.2.6 For this to work, a suitable definition of “short-term” interests would need to be clearly identified, especially if similar borderline issues are to be avoided.

3.2.7 The suggestion would affect minor and short-term interests in land and property. It would need to consider the wider issues inherent in the present legislation, such as removing borderlines and providing certainty in relation to all types of supplies of land and property. However, HMRC would be interested in obtaining wider views on

¹⁰ British Property Federation, Submission to the Treasury Select Committee inquiry into VAT – May 2018. Paragraph 23.

whether overcoming these issues would be possible and if so, whether this would be a useful simplification to consider further.

Questions

5. What are the advantages and disadvantages of defining minor and short-term interests in land and property as subject to VAT?
6. How should a minor and short-term interest be defined?

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

- 3.3.2 Another option is to change the current VAT rules in order to make most supplies of land and property subject to VAT by default. Rather than having an “option to exempt” as considered by the OTS, only certain specified supplies of land and property (for example, residential accommodation and charitable buildings) would be treated as being exempt from VAT.
- 3.3.3 In this case, the option to tax legislation would no longer be necessary and could be withdrawn. However, this would also reduce the flexibility offered by the current legislation and mean that some existing supplies that are currently exempt could become subject to VAT, although any additional output tax liability may be offset to some degree by an increased recovery of input tax.
- 3.3.4 This could greatly simplify the VAT rules on land and property. It could also provide greater certainty to small and medium sized businesses, without the need to seek costly external advice.

Questions

7. What are your views on the option to make supplies of land and property subject to VAT apart from certain specified exceptions?
8. Which particular supplies of land and property should continue to be exempt from VAT if this option were to be considered further?
9. Are there any supplies that should be subject to VAT that are currently exempt or vice versa?

3.4.1 VAT Liability linked to Land Registry

- 3.4.2 A further option which could provide certainty for businesses is to link the VAT liability of supplies of land and property interests to those that have been registered with the relevant Land Registries in England, Scotland, Wales and Northern Ireland.
- 3.4.3 If it was decided that interests registered in a Land Register were to be exempt from VAT, then any interest in land not registered with a relevant Land Registry would be taxable by default.
- 3.4.4 Alternatively, interests registered with the relevant Land Register could be taxable, thereby making any interests in land that are not so registered exempt from VAT.
- 3.4.5 Either of the above could still be subject to exceptions to ensure certain interests always remained taxable or exempt.
- 3.4.6 A benefit of this option is that it would provide greater certainty of the VAT liability of land transactions, by reference to an independent and publicly accessible record. It would also reduce the scope for disputes between HMRC and businesses.
- 3.4.7 Like some of the other simplification options, this would also reduce the flexibility available under the current rules.

Questions

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

3.5.1 Other suggestions

- 3.5.2 In this document we have presented a limited number of potential options to simplify the VAT rules relating to land and property, and we would like to hear your views on these options. However, this is an open call for evidence, and HMRC would welcome other suggestions not considered here, including those that may have only become possible since the UK's departure from the EU.
- 3.5.3 Alternatively, if you think the relative complexity of the current VAT rules on land and property are justified by the versatility they allow, then we would like to know.

Questions

12. Do you have any other suggestions on how the land and property VAT rules could be simplified?
13. Would you prefer to keep the VAT rules on land and property as they are? If so, please explain.

4. Summary of call for evidence questions

Chapter 2

1. What is your experience of the VAT rules on land and property?
2. Are there any supplies that are particularly difficult to establish the correct liability for, leading to financial and administrative burdens? Please explain.
3. Do you think that the land and property VAT rules require simplification? Please explain why.

Chapter 3.1

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

Chapter 3.2

5. What are the advantages and disadvantages of making all minor and short-term interests in land and property subject to VAT?
6. How should a minor and short-term interest be defined?

Chapter 3.3

7. What are your views on the option to make supplies of land and property subject to VAT apart from certain specified exceptions?
8. Which particular supplies of land and property should continue to be exempt from VAT if this option were to be considered further?
9. Are there any supplies that should be subject to VAT that are currently exempt or vice versa?

Chapter 3.4

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

Chapter 3.5.

12. Do you have any other suggestions on how the land and property VAT rules could be simplified?
13. Would you prefer to keep the VAT rules on land and property as they are? If so, please explain.

5. The consultation process

This consultation is being conducted in line with the Tax Consultation Framework. There are five stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2: Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3: Drafting legislation to effect the proposed change.

Stage 4: Implementing and monitoring the change.

Stage 5: Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A summary of the questions in this consultation is included at chapter 4.

Responses should be sent by 3 August 2021 by email to landsimplification@hmrc.gov.uk.

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

HMRC is committed to protecting the privacy and security of your personal information. This privacy notice describes how we collect and use personal information about you in accordance with data protection law, including the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act (DPA) 2018.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, UK General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the UK General Data Protection Regulation.

Your Data

The data

We will process the following personal data:

- Name
- Email address
- Postal address
- Phone number
- Job title

Purpose

The purpose for which we are processing your personal data is for the call for evidence on the proposal suggested by HMRC to simplify the VAT exemption on supplies of interests in land and property.

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by HM Revenue and Customs with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
030 3123
113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue and Customs
14 Westfield Avenue
Stratford, London E20 1HZ
advice.dpa@hmrc.gsi.gov.uk

Consultation principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:

<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact the Consultation Coordinator using the following link:

[Submit a comment or complaint about HMRC consultations.](#)

Please do not send responses to the call for evidence using this link.