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Pension Scheme Commercial Property and VAT

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2. Introduction

We do not give tax advice and you should seek advice from a VAT specialist. This guideline is for information only and must not be considered as advice.

We always recommend you take advice from a financial adviser before making an investment decision with your pension fund. If you don't have an adviser, details of local firms can be found at www.unbiased.co.uk.

Many commercial properties are "elected" or "opted" for VAT (Value Added Tax). This is a tax of 20% added to the purchase price and rental of a VAT-opted property. It is important to know whether a property is opted for VAT before you consider purchasing it or whether you wish to elect a property you already own for VAT.

From August 1989, new commercial buildings were automatically subject to VAT. You may also choose to elect a property for VAT, usually to reclaim the VAT on the cost of development work.

Pension schemes can register for VAT and opt to tax a property, meaning they can reclaim any VAT paid on commercial property purchases. They must then charge VAT on their rent and maintain accurate records to carry out ongoing VAT submissions and payments to HM Revenue & Customs.

Please note that getting a VAT status wrong can have major tax implications.

Should you need support in the event of a vulnerability, please don't hesitate to contact us. We have a team of specialists available to help you.

3. The Basics

- Where a commercial property is subject to VAT the purchase price is increased by 20% which must be paid by the purchaser to the vendor. The vendor then pays the VAT to HMRC.
- A UK registered pension scheme can register for VAT in the same way as a business and can then reclaim the VAT paid on purchase.
- The pension scheme must then charge VAT on the rental of the property, maintain VAT records and submit quarterly VAT returns where VAT charged on the rent is paid to HMRC.
- Any VAT paid on expenses for the maintenance of the property can be offset.
- If you decide to register your pension scheme for VAT, this will enable the reclaiming of any VAT on the purchase price. If so, the registration needs to take place before the property is purchased.

Example 1: Purchase

A light industrial unit is being sold to a pension scheme for £100,000. It is subject to VAT so the actual amount payable is £120,000.

The pension scheme registers for VAT and following the purchase, when it submits its first quarterly return, it can reclaim the additional £20,000.

The rental of the property is £6,000 p.a. which is charged at £1,500 per quarter. As VAT must be included the amount charged is actually £1,800 per quarter.

In each quarterly VAT return the pension scheme declares £300 VAT is payable minus any VAT paid on property expenses such as repairs and maintenance costs.

- Where a property is not VAT elected, there is no requirement to register your pension scheme. In some circumstances, you may choose to elect the property to VAT, such as when you are spending a significant amount developing the property; your VAT adviser / accountant will help you with that.

4. Registration Process, Timescales and Cost

- The registration process is similar to registering a company and is carried out by setting-up a Government Gateway account for the pension scheme and making an online registration.
- Additional forms are required to register as a partnership on behalf of the Trustees of a pension scheme and to opt to tax the property being purchased.
- Occasionally it may not be possible to opt to tax a property, in which case VAT will be irrecoverable. One example is where the purchase price of a property is £250,000 or more and the tenant is wholly or partially exempt from paying VAT (e.g. a charity).
- A direct debit is set-up with HMRC to pay VAT and receive VAT refunds.
- HMRC can ask for additional details and documents before completing the registration and issuing the VAT certificate.
- The process can take a couple of months to complete.
- Our fees for registering a pension scheme, making the quarterly returns and maintaining the records are set out in our Schedule of Fees.

5. Quarterly Returns

Full records must be maintained of all VAT charged on rent and all expenses which include VAT. If a VAT invoice is not issued for rent and a copy VAT invoice for expenses cannot be produced, a VAT return may be rejected by HMRC and the pension scheme can be fined. All invoices for expenses must be addressed to the trustees of your pension scheme.

VAT returns are submitted quarterly. The submission deadline is one month and seven days after the end of the VAT quarter date.

In the first return, the VAT paid on purchase and other expenses in relation to the property incurred up to six months before the VAT registration date is reclaimed but it typically takes 30 days after the VAT return submission date for the refund to be paid. This means that it could be up to five months after a property purchase before the VAT refund is made.

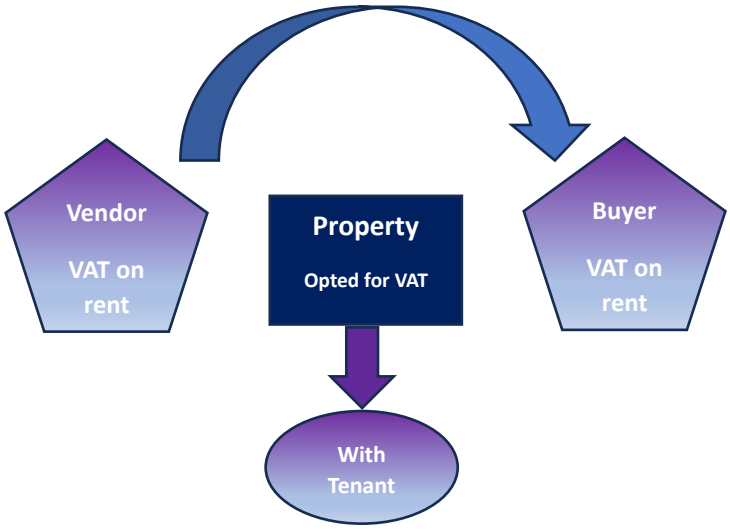
HMRC will often contact us for supporting evidence such as copies of the Transfer Deed, Completion Statement and purchase invoice before concluding a large VAT reclaim.

Quarterly VAT returns consist of VAT charged on rent and VAT paid on ongoing expenses such as repairs.

Example 2: Quarterly VAT Return

	Total	Net of VAT	VAT Payable/Offset
Rent Received Month 1	£1,200	£1,000	£200
Rent Received Month 2	£1,200	£1,000	£200
Rent Received Month 3	£1,200	£1,000	£200
Total Income	£3,600	£3,000	£600
Expenses (Painter)	£840	£700	£140
Expenses (Roofer)	£600	£500	£100
Total Expenses	£1,440	£1,200	£240
Net VAT payable to HMRC			**£360**

- In certain circumstances, where a property with an ongoing lease is sold and both the vendor and pension scheme have registered for VAT and opted to tax the property, VAT does not have to be charged. The conditions to qualify as a 'Transfer of a Going Concern' (TOGC) are:
  - The vendor has registered for VAT and opted to tax the property.
  - There must already be a lease in place and the lease continues in force after the transfer of the property to the pension scheme – the business of letting the property is transferred as a going concern. this includes if it is in a rent-free period, the tenants have not yet taken occupation or a contractual agreement for a lease has been signed but the lease has not yet been signed.
  - The pension scheme is registered for VAT.
  - The pension scheme has opted to tax the property and has notified this to HMRC.
  - The vendor should ask for confirmation from the pension scheme that the Option to Tax has been notified and should obtain certification from the pension scheme that the VAT anti-avoidance provisions do not apply. If they fail to do this they invalidate the TOGC and should charge VAT on the sale.
- A TOGC does not qualify where a current tenant is the purchaser because the ongoing lease ceases at the point of purchase.
- Even where a TOGC applies, the purchaser must still charge VAT on the rent.



7. Pension Transfers

A transfer of VAT-registered commercial property from one pension scheme to another operates in the same way as a sale and purchase.

If the conditions for a TOGC exist (both pension schemes are registered for VAT, the receiving scheme opts to tax the property prior to transfer and there is an existing lease that continues post-transfer), then no VAT is payable on transfer.

If not, e.g. there is no existing lease, then the transferring scheme must issue a VAT invoice.

The receiving scheme must pay the VAT (even though it is not purchasing the property), which is then paid to HMRC by the transferring scheme.

The receiving scheme can reclaim the VAT in its their next quarterly return.

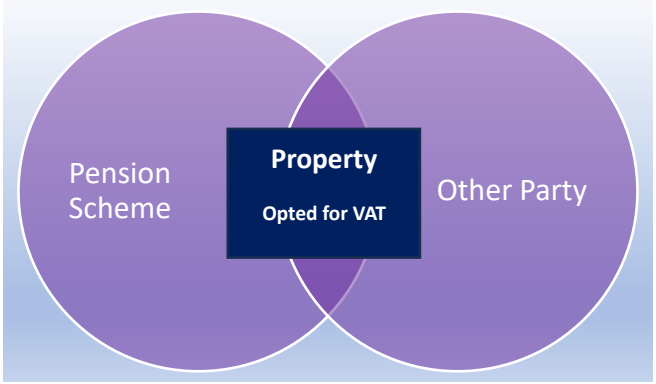
As the receiving scheme may not have cash available to pay a VAT charge, an advance transfer of cash from the transferring scheme can be requested to fund this.

8. Joint Purchases: Pension Scheme and Another Party

A pension scheme can jointly purchase commercial property with another party (pension scheme, company or individual(s)). In these circumstances a separate VAT registration as a partnership is required for that jointly owned property and any others owned between those parties. A pension scheme could therefore have two or more VAT registrations for different properties.

We are unable to carry out the VAT registration, record keeping or quarterly returns for a partnership as this is beyond the scope of our contractual relationship.

Partnership registrations therefore have to be carried out by clients, their accountants or other specialist VAT advisers.



9. Developments

Where a pension scheme is carrying out development of property it can opt to tax a property even where it is not already VAT-opted. Although it may seem strange that a property owner decides to charge VAT, it can make commercial sense because VAT paid on the development costs can then be reclaimed.

Example 3: Development

A SSAS owns a workshop which is let to the client's business. They want to build additional storage on the site which will cost approximately £150,000 plus VAT. The SSAS pays for the development and has to pay VAT of £30,000. By registering the SSAS for VAT and opting to tax the property, this cost can be reclaimed by the SSAS.

On completion of the development the rent has to be re-valued and the lease to the company amended so that higher rent is paid. The SSAS must now start charging VAT on the rent. Provided the client's business is also VAT registered, it can reclaim the VAT it has to pay.

When the property is sold, VAT will apply to the sale price (unless it is a TOGC).

Please note that if a pension scheme carries out regular development and sale of property it could be treated as trading and have its profit taxed accordingly. In our experience, one-off developments are not affected by this rule.

10. Conversions: Commercial to Residential

If a pension scheme is selling a VAT-opted commercial property and the purchaser intends to convert it to residential, by completion of the relevant form it can disapply the option to tax so no tax is charged on the sale price. This may have an impact on how much input tax the scheme can claim or make it necessary

to repay input tax previously claimed by the scheme, so we recommend taking advice from VAT specialist before agreeing to a sale on this basis.

It is also possible for a pension scheme to carry out the conversion of a commercial property to residential provided the property is sold before it becomes habitable. For practical purposes, this means before the works are substantially complete and an architect's certificate of completion is issued.

In this scenario, the pension scheme can register for VAT and opt to tax the property so it can recover VAT incurred on the conversion costs. The sale of the freehold or long leasehold of the almost built or almost converted residential property qualifies as a taxable supply and is zero rated for VAT provided the following applies:

- The property must be sold.
- It must be a conversion from a non-residential property.
- It must not be converted into a holiday home.
- the person must have 'person converting' status (i.e. the pension scheme must have carried out the conversion)
- the required form to disapply the VAT-option is submitted by the purchaser to the pension scheme before the sale is made (1614D).

Some costs incurred in converting commercial to residential property are blocked from VAT recovery (anything that is not building materials such as carpets, curtains, fitted wardrobes, white goods). A pension scheme cannot purchase these items anyway as they are treated as taxable property.

The same caveat regarding trading applies here.

11. Property Sale

When a VAT-opted property is sold, the pension scheme must issue a VAT invoice to the purchaser.

The VAT received on sale is then paid to HMRC via the next quarterly VAT return.

If the pension scheme only holds one property and there are no plans to purchase another, it can cancel its VAT registration by applying to HMRC.

Provided the Transfer of a Going Concern requirements apply (see above), a sale may not require VAT to be charged.

12. Our Role

We provide property administration services for which we charge fees. We wil act on your instructions when carrying these out.

We do not give tax advice and as VAT is a complex area, we always recommend you take advice from a spedialist. We cannot accept any liability for failures in the VAT registration process or where the required documents are not provided or we are given incorrect information.

Our administration duties are limited to:

- Completion of VAT registration forms and submission to HMRC
- Maintaining records of VAT invoices provided by you
- Submission of quarterly VAT returns to HMRC via MTD-compliant software
- Answering queries from HMRC. We may need assistance from your tax advisers on some queries.
- Attending VAT inspections on our premises. We charge additional time-cost fees for this.
- De-registration of the pension scheme for VAT when this is no longer required.

If you have any queries regarding these guidelines, please get in touch.

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March 2025