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VAT and property in 2021

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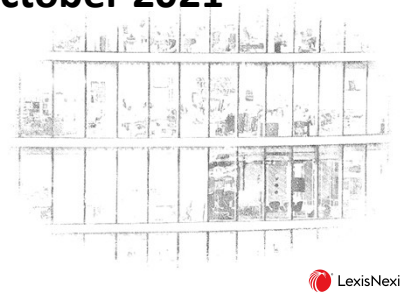
VAT and property in 2021

The law as stated during this webinar is up to date as of **26 October 2021**



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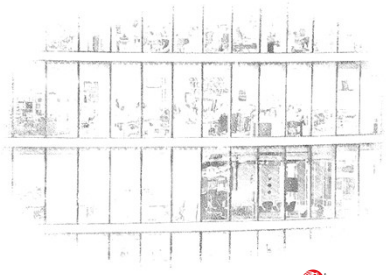

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Topics covered

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Topics covered

- RCB 12/2020 - VAT on early termination fees and compensation payments
- VAT exemption
- Domestic reverse charge
- Sale and leasebacks
- A recent care home case

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RCB 12/2020 - VAT on early termination fees and compensation payments

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RCB 12/2020 – Timeline

- RCB 12/2020 and new guidance published September 2020 in relation to VAT on early termination fees and compensation payments
  - Not specific to real estate
  - Raised lots of questions
  - Retrospective application
- January 2021 HMRC accepted
  - not retrospective after all
  - needed to consider application to real estate
  - will update guidance and can follow old or new approach until then
- Revised guidance still not published but some progress

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RCB 12/2020 – application to Real Estate

- Overriding concept
- Break payments
- Dilapidations
- Liquidated damages
- Current impact in practice
  - VAT clauses, include flexibility
  - Generally more caution

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VAT exemption

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VAT exemption

- Simplifying the VAT Land Exemption – HMRC call for evidence published in Spring 2021
- Topical issues:
  - Overages
  - Call options – post *Landlinx*
  - Option to tax anti-avoidance rules - *Moulsdale*

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Domestic Reverse Charge

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Domestic reverse charge

- Delay due to Covid-19 but came into force from 1 March 2021
  - What is the DRC?
  - Another anti-avoidance measure?
  - Who accounts for VAT?
  - What changes from the normal position?
  - Who will be affected and in what circumstances?
  - Apportionment or all services subject to DRC?
- End-users and intermediaries
  - Written confirmation needed
  - Obligations to confirm if reverse charge applies and to pay VAT as normal if not
- Construction Industry Scheme overlap
  - End-user/intermediary registration
  - Scope of application different

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Sale and Leasebacks

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Title

- Three recent cases in this area:
  - *Mydibel* (CJEU)
  - *Balhousie* (Supreme Court)
  - *A Blue* (FTT)

- *Mydibel* (CJEU)
  - Belgian case
  - Tax authority sought to adjust input tax recovery under similar rules to the CGS
  - No gap in time between sale and leaseback
  - Composite transaction
  - No input tax recovery adjustment

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Title

- *Balhousie* (Supreme Court)
  - Scottish case concerning self-supply charge in context of financing sale and leaseback
  - Charge applies if taxpayer "disposed of entire interest" in the property
  - Lord Briggs – not a question of whether there was a composite or two single transactions; "entire interest"
  - Decentring judgment from Lady Arden – applied *Mydibel*
- RCB 13/2021 in response to *Balhousie*
- *A Blue* (FTT)
  - Is the story really over?
  - HMRC argued that the lease was a non-business activity in non-reported case
  - FTT followed *Mydibel* and did not regard the sale and leaseback as a barter

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Finally, another care home case

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Silver Sea Properties (Leamington Spa) v HMRC [2021]

- *Silver Sea Properties (Leamington Spa) v HMRC* [2021] UKFTT 0350 (TC)
- About zero-rating within Propco/Opco structure of a "turnkey" care home
- How furniture, fixtures and equipment supplied by PropCo to OpCo were treated
- Whether single composite zero-rated supply
- Highlights complexity of VAT treatment of certain residential property holding structures

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Thank you

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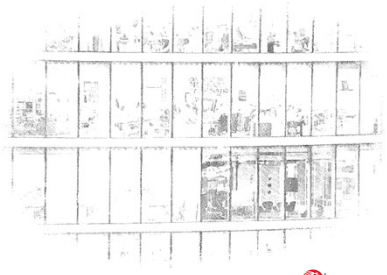
VAT and Indirect Tax webinars in 2021

- VV0121 VAT reverse charge (2021) - Q1 2021
- VV0221 VAT and supply chains (2021) - Q1 2021
- VV0321 Indirect tax and e-commerce (2021) - Q2 2021
- VV0521 Litigation and disputes in VAT and Indirect Tax (2021) - Q3 2021
- VV0421 VAT and property in 2021 – Q4 2021
- VV0621 VAT and Indirect Tax - end of year round-up 2021 - Q4 2021



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