

Tolley's

VAT on Construction Land and Property

Third Edition



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Robert Crooks

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Tolley's VAT on Construction, Land and Property

by
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of
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Preface

There must be few who have been involved in any complex property transaction who have not commented about the intricacy of VAT in this area. Most who have any significant involvement with VAT would agree that there is no more complicated aspect of the tax. It is without doubt an area in which it is easy to make mistakes, mistakes which may be all the more costly as a result of the significant value that often attaches to property transactions, which inevitably impacts on any liability to interest or penalties.

This book is intended to be a practical guide to the existing VAT and property legislation, including commentary on the latest case law where appropriate. The book is divided into two parts for ease of reference. Part 1 is a guide to the legal provisions and their practical operation, including some worked examples of the operation of the provisions where appropriate. Part 2 is dedicated to different property scenarios. Each chapter highlights the major VAT issues for the particular scenario and also some of the peripheral issues that are likely to be encountered. The chapters in Part 2 are cross referenced to Part 1 so that the reader can refer to the detailed guidance on specific aspects affecting a particular property scenario.

Although specific reference is sometimes made to the impact of and interaction with other taxes, the book is intended only to be a guide to the VAT provisions. A reader should always consider or seek advice on other taxes in connection with any property scenario.

The VAT and property regime has seen two tranches of significant changes in the last four years. In this period, there have also been other major changes which have impacted on the property sector, for example, the introduction of the capital goods scheme.

The first tranche of changes was made in 1989 to comply with the judgment of the European Court of Justice on 21 June 1988 in the infraction proceedings brought by the EC Commission against the UK. In its judgment, the European Court held that the extent to which property transactions (and certain other supplies) were zero-rated in the UK was contrary to EC VAT law which overrides the national VAT law of EC member states.

Essentially, the 1989 changes sought to achieve three things. First, the removal of the existing zero-rating for property transactions, except in relation to the construction and sale of certain new residential and new charitable buildings. Secondly, the imposition of VAT on the use of all new non-residential and new non-charitable buildings. Thirdly, the introduction of a regime allowing property owners to charge VAT on the letting and sale of non-residential and non-charitable buildings (the 'option to tax').

Preface

Taken at face value, one might imagine that these three goals should not have been difficult to achieve. However, the efforts of the parliamentary draughtsmen have produced an extremely complex legal framework, considered to be necessary by Customs & Excise in order to create provisions that were both workable and fair in their effect. Indeed, early drafts of the legislation were heavily amended, and the legislation that finally passed onto the statute books bore little resemblance to the original drafting in many areas.

The fact that Customs & Excise considered it necessary to introduce a second tranche of major changes with effect from 1 January 1992 illustrates that the changes introduced in 1989 did not entirely succeed in their objectives. In 1989, Customs & Excise had been unable to find a workable solution to a valuation issue in connection with the developer's self-supply rules introduced in that year. This had left a gaping hole in the legislation that was, no doubt, exploited to the taxpayer's benefit in the intervening period. This hole was plugged by the 1992 raft of changes.

In addition, Customs & Excise did not have time in 1989 to introduce workable provisions to apply the developer's self-supply rules to the redevelopment of existing buildings. These rules were extended to redevelopments in the second tranche of changes, and some of the legislation in relation to the option to tax was also amended.

There are still many aspects of the VAT and property rules where the provisions are not workable or can produce distortive effects. The recent issue of a consultation paper by Customs & Excise recognised this, made a number of suggestions for resolving the problems, and sought the views and alternative suggestions of the property industry and its advisers. The thrust behind the proposals was simplification, and if the consultation process is successful in this regard, all businesses are likely to benefit. However, the extent to which some of the proposals would result in simplification is far from clear.

Responses to the consultation paper had to be submitted by 15 October 1993. At the time of publication of this book, the reaction of Customs & Excise to them is still awaited. However, it seems inevitable that businesses will be faced with a third tranche of changes in this area of the tax. It can only be hoped that these changes will be of benefit.

The guidance contained in this edition of *Tolley's VAT on Construction, Land and Property* takes account of UK primary law, secondary legislation, case law and practice statements as at 1 April 1994.

Finally, I would like to express my gratitude to my colleagues, particularly Penny Hamilton and Ron Nattrass, who have helped me enormously in finalising this book.

Robert Crooks
April 1994

Abbreviations and References

All ER	=	All England Law Reports (Butterworth & Co (Publishers) Ltd)
C & E	=	Customs & Excise
CA	=	Court of Appeal
C/S	=	Court of Sessions (Scotland)
Ch D	=	Chancery Division
EC	=	European Community
ECJ	=	European Court of Justice
FA	=	Finance Act
H/L	=	House of Lords
Q/B	=	Queen's Bench Division
Reg	=	Regulation
s	=	section
Sch	=	Schedule [2 Sch 2 = 2nd Schedule, paragraph 2]
SI	=	Statutory Instrument
STC	=	Simon's Tax Cases (Butterworth & Co (Publishers) Ltd)
TOGC	=	Transfer of a business as a going concern
VATA 1983	=	Value Added Tax Act 1983
VATTR	=	Value Added Tax Tribunal Reports

Court cases. Citation where appropriate is of Simon's Tax Cases and is preceded by the court and year of the decision (if different from the citation).

Tribunal cases. Citation is either by reference to a Value Added Tax Tribunal Report (VATTR) published by HM Stationery Office (e.g. (1980) VATTR 42) or the tribunal centre reference followed, in brackets, by a number assigned to the decision by the VAT Tribunals Headquarters (e.g. LON/90/3727 (6575)). In all tribunal cases only the appellant is named.

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