



Revising Property Lease Terms and Barter | The VAT Implications

Following the Government's release of the new Code of Practice for Commercial Property in June, many landlords will be entering into open and honest discussions with their tenants as to how they can assist ease the effect that the national lock-down has had on businesses.

Where does VAT come into it?

If a landlord simply agrees to give a tenant a rent free period or agrees to defer a rent payment there is unlikely to be any VAT liability for either party. This is known as a "*non-taxable supply*".

However, HMRC has confirmed that if a landlord grants a rent free period in return for a tenant doing something (such as giving up a break option or agreeing to extend the lease term) then both parties have potentially made a supply for VAT purposes. It is likely that both supplies are of equal value (as one is given in return for the other), but this does need to be considered in each case on the facts of the *barter*.

What is a barter transaction?

A barter transaction is when one supply is given in return for the other rather than for monetary consideration. This means that even if no money is exchanging hands under a lease variation, the parties can be treated as making a supply for VAT purposes.

A typical "barter transaction" could look like this:

- The Landlord's supply = granting a 6 month rent free period
- The Tenant's supply = agreeing to extend the lease by 6 months

HMRC's guidance

HMRC have confirmed that if a landlord grants a rent free in return for a tenant extending the lease term, both the landlord and the tenant will have made a supply for VAT purposes.

Using the above example, a landlord and a tenant may agree that the value of the rent free period is equal to the net rents that would have been charged had the rent free period not been granted i.e.

- *£60,000 = 6 months' rent*
- *£60,000 = value of rent free period*

Who pays the VAT?

If the landlord and tenant have both opted to tax the property then both parties are required to complete the simple administrative, but important task of exchanging VAT invoices. The invoices will record the transaction without any money changing hands.

What if the Tenant hasn't opted to tax the property?

If a tenant has not opted to tax the property, the supply of the property in a barter would be exempt.

The landlord will still issue a VAT invoice to the tenant even if the tenant decides it is not making a supply. Instead of exchanging invoices, the tenant will need to pay the VAT to the landlord so that the landlord can account for it to HMRC.

This will, of course, be an important cash flow cost for a tenant to consider in such circumstances. As such it is clear that both landlords and tenants should not disregard VAT consequences when negotiating any rent concession, as it is possible that both parties may end up with unexpected VAT liabilities.

This is a complicated area and landlords and tenants are advised to seek guidance from their VAT advisors for a complete picture.

If you have any questions regarding property lease terms and barter, in relation to VAT implications, please email our real estate solicitors at online.enquires@la-law.com