

Insight

4/8/2009

Charity VAT Alert

HMRC have recently announced changes to the rules that allow charities to build or acquire buildings for a relevant charitable purpose (non – business use) VAT free.

Background

Currently charities enjoy VAT zero rating on the construction or acquisition of buildings which are used for a relevant charitable purpose. The building must be used solely for a relevant charitable purpose but HMRC by concession allow up to 10% business use providing that:

- the business use is measured according to one of three prescribed methods provided for by the concession; and
- that HMRC prior approval is granted.
- In the event that business use of the building exceeds 10% within 10 years of completion or acquisition a VAT charge may be levied in certain circumstances.
- There are also two related concessions:
- the “look through” concession which allows a charity that lets part of its building to another charity to take into account the tenant's use of the building when calculating the non-business use of the building; and
- the “switching areas” concession allows change of use of parts of a building to be disregarded providing the overall use of the building remains unchanged.

The changes

With effect from 1 July 2010 the following changes will occur:

- business use will be restricted to 5%. This will clearly make meeting the business use test much harder for charities and could result in VAT being charged on more developments.
- the calculation of business use may be made using any method that produces a fair and reasonable result and will not be restricted to the prescribed methods as is currently the case. The prior approval of HMRC to use a method will not be required although it may be prudent to agree it with them in advance.
- if the building is used more than 5% of the time for a business purpose within 10 years of completion or acquisition then VAT will be payable to HMRC under a change of use charge.
- the associated “look through” and “switching” concessions will be withdrawn.

Transitional rules

Between now and 1 July 2010 charities will be able to use either the existing rules or the new ones which will take effect from that date which will mean either:

Old rules

- the 10% business test may be used with its restricted method of calculation but more importantly only an outside chance of a change of use clawback.

New Rules

- the 5% business test may be used calculating business use by any fair and reasonable method and a VAT charge on change of use within 10 years.

Summary

In our view these changes create a less favourable VAT regime for charities that are constructing or acquiring new buildings. Charities that are considering capital works should familiarise themselves with the changes and consider bringing projects forward to take advantage of the old rules before they disappear finally on 1 July 2010.

If this issue affects you and you would like to discuss matters further please contact Simon Buchan on 0114 2667171 or email simon.buchan@bhp.co.uk



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