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VAT

Recent VAT changes to bring France in sync with EU rules

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France has not been applying European rules in respect of property transactions on VAT leaving it exposed to possible risks of legal actions by parties to such transactions. It also faced prospects of huge fines from the EU on account of non-compliance of the EU regulations in this area. The French Parliament therefore, hurriedly brought into force new regulations to bring French law in conformity with EU Directives on the application of VAT to sale transactions of homes and building land. These rules originally to be effective from 2011, have now become effective since March 11, 2010. David Anderson looks at these changes and consequences.

I. Background

Important changes came into effect in France from March 11, 2010 in the way VAT and stamp duty operate on property transactions. The new regime is generally to be welcomed and presents a number of opportunities especially for speculators buying, improving and then selling older properties. The changes were to bring France into line with EU rules on VAT and were implemented hurriedly. As such, a full commentary on them by the French Revenue is still awaited. The changes are discussed in the ensuing paragraphs.

II. Main changes

- From March 11, 2010 the seller is liable for VAT.
- The general rule is that VAT is payable if the seller is registered for VAT; and
- Special rules which previously only benefitted registered property dealers "*marchand de biens*", have been abolished and anyone can now benefit from them.

III. Building land

An objective test has been introduced for 'building land'. Land which has planning permission, is defined as 'building land'. Under the old rules, even if the seller

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was registered for VAT (say a developer), VAT did not have to be charged on the sale of this type of property provided that the buyer was an individual. If the buyer was a company which included an SCI, VAT had to be charged. This issue usually came up in the case of plot sales in which the buyer was to be legally the builder and usually meant that the purchase had to be in the buyer's personal name so that stamp duty and not VAT was payable.

This exception from VAT has now gone and all sales of 'building land' are subject to VAT at 19.6 percent payable by the seller which will increase the price of plots. VAT is on the whole price if the seller originally bought from a VAT registered person and reclaimed the VAT on the purchase, or on the margin if bought originally from an unregistered person. This makes sense as the VAT is being passed through to the ultimate buyer if the seller had recovered it when he bought the land.

Stamp duty is payable by the buyer at 5.09 percent if the seller had originally bought the land from a non-VAT registered person and 0.715 percent if the seller bought from a VAT registered person. Because the buyer is being charged VAT on the whole price, stamp duty is reduced.

The effect of this will be negative for non-VAT registered (i.e. end user) buyers of plots.

IV. Sales of "new" buildings (less than five years old)

If a VAT registered person (e.g. developer) sells a building which is less than 5 years old, VAT at 19.6 percent is payable on the purchase price. Previously, it was only the first sale of such "new" buildings which fell within VAT. The buyer pays stamp duty at 0.715 percent. There is no change here.

If a non-VAT registered person sells a new building (which includes one which has been very substantially renovated) then there is generally no VAT. This is a major change from the previous rule, which required VAT to be paid on all new buildings. Stamp duty is payable at 5.09 percent. VAT may be payable in certain cases which are discussed below.

V. Sales of old buildings, more than five years old

Generally no VAT is due in these transactions, even if the seller is VAT registered, though a VAT registered seller can elect to charge VAT. Stamp duty is payable at 5.09 percent in all cases.

VI. Re-sales and rebuilding

There are special stamp duty treatments for buyers in certain circumstances. Those who provide an undertaking when buying to build a property on the land within five years will be exempt. If a buyer provides an undertaking to re-sell within five years, a reduced rate of 0.715 percent applies. These special exemptions previously only applied to people registered as property dealers "*marchand de biens*". This change should give rise to more informal property speculation. The French position is more attractive than the position in the UK in which a property speculator/developer has to fund the stamp duty on a purchase.

VII. Examples

The examples below show the total VAT and stamp duty cost for property bought for EUR 100,000 with works of EUR 30,000 (all at 5.5 percent rate = EUR 1,650) and sold on for EUR 200,000 – the buying and selling prices including VAT if applicable. In other words, the speculator has had to pay EUR 100,000 plus costs to buy the property in and has to market the property at EUR 200,000 plus fees on sale.

They show that the best approach for the speculator keen to minimise VAT and stamp duty is to register for French VAT and deal in renovating old buildings without carrying out works, which are so substantial that in effect it tantamount to a new building you create a new building construction.

A. Scenario 1: Purchase of an old building by a non-VAT registered person from a non-VAT registered seller sold on to non-VAT registered person.

- Stamp duty on purchase at 5.09 percent.
- Stamp duty on sale at 5.09 percent.
- No VAT recovered on building works.
- Total tax cost is EUR 5,090 + EUR 10,180 + EUR 1,650 = EUR 16,920.

In practice, the speculator will fund only EUR 5,090 + EUR 1,650 = EUR 6,740 because most buyers will accept they have to pay the stamp duty on the EUR 200,000 price.

B. Scenario 2: Purchase of an old building by VAT registered person from non-VAT registered seller; then sold on as old building to non-VAT buyer.

- Stamp duty on purchase 0.715 percent as buyer undertakes to sell on within 5 years.
- Stamp duty at 5.09 percent paid by buyer when sold on.
- VAT recovered on works.
- Total tax cost is EUR 715 + EUR 10,180 = EUR 10,895.

In practice, the speculator will fund only EUR 715 because most buyers will accept they have to pay the stamp duty on the EUR 200,000 price. This is an attractive option.

C. Scenario 3: Purchase of land by VAT registered person from non-VAT registered seller; then sold on as new building to non-VAT buyer.

- No stamp duty on purchase as buyer undertakes to build.
- VAT on EUR 200,000 (inclusive) when sold EUR 32,775 i.e. (EUR 167,225 + EUR 32,775).
- Buyer pays 0.715 percent stamp duty.
- VAT recovered on works.
- Total tax cost is EUR 32,775 + EUR 1,430 = EUR 34,205

In practice, the speculator will fund only EUR 32,775 because most buyers will accept they have to pay the stamp duty on the EUR 200,000 price.

D. Scenario 4 -Purchase of land by non-VAT registered person from non-VAT registered seller; then sold on as new building to non-VAT buyer.

- Stamp duty at 5.09 percent on original purchase by seller.
 - Stamp duty at 5.09 percent on purchase by buyer.
 - No recovery VAT on works.
 - Total tax cost 5,090 + 10,180 + 1,650 = EUR16,920.
- In practice, the buyer will pay stamp duty so cost to the speculator will be EUR 5,090 + EUR 1,650 = EUR 6,740

E. Scenario 5: Purchase of land by VAT registered person from non-VAT registered seller; then sold on as new building to non-VAT buyer.

- No stamp duty on purchase – engagement to build.
- VAT on EUR 200,000 (inclusive) when sold EUR 32,775 i.e. (EUR 167,225 + EUR 32,775).
- Stamp duty on sale price at 0.715 percent.
- Recover VAT on works.
- Total tax cost is EUR 32,775 + EUR 1,430 = EUR 34,205.

In practice, the speculator will fund only EUR 32,775 because most buyers will accept they have to pay the stamp duty on the EUR 200,000 price.

VIII. Other tax issues

Assuming a UK developer/speculator opts for "Scenario 2" so that he can keep his capital funding costs low, and buys an old building from a private seller, registers for VAT and sells on to a non VAT registered buyer what are the other tax issues?

Keeping in very simple and doing everything in his one name, he will be subject to income tax on the gain in France as he will be viewed as a dealer. He will also have a liability in the UK as a UK resident but will be able to deduct the French liability against any UK liability. He should not be liable to any French national insurance as he is not French resident.

If he uses a UK company, he will be within French corporation tax as a dealer and be able to deduct this against UK corporation tax in the same was as above. *David Anderson, Solicitor & CTA, is Partner at Sykes Anderson LLP Solicitors and Chartered Tax Advisers, London. he may be contacted by Email at david.anderson@sykesanderson.com or by telephone at +44 (0)20 3178 3770.*

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