# Simplifying the VAT land exemption

**Indirect Tax**

07 September 2021

**The CIOT and the ATT have submitted their responses to HMRC's call for evidence on simplifying the land exemption.**

Both the CIOT's and the ATT's responses to the call for evidence (see tinyurl.com/3p9frs7z) acknowledged the need for simplification in specific problem areas. However, they also said that for the majority of land and property transactions, the VAT liability is clear and is administratively straightforward under the existing rules; hence a major overhaul of the VAT rules could result in added complexity, rather than a simplification.

### A right over land, the supply of facilities or something else?

The most common 'difficult' issue is establishing the correct VAT liability where it is not clear whether the supply is a right over land (VAT exempt, subject to the option to tax), the supply of facilities (taxable standard rated) or the supply of something else (VAT liability to be identified). For example, where a business trades from a vehicle or mobile unit, is the site operator supplying parking, a right over land or the supply of facilities?

Further issues were highlighted that arise from the principle established in Sinclair Collis (Case C-275/01): where the VAT position is not clear from the interpretation of Group 1, Schedule 9 to the Value Added Tax Act 1994 (VATA 1994), the European legislation definition of 'leasing or letting of immovable property' (Article 135(1)(l) of the Principal VAT Directive) including the 'passive provision of space' must be considered. The UK's interpretation of 'right over land' was much narrower than in some EU countries, for example Italy and Spain.

### What could be improved in relation to the option?

Both responses also identified issues specifically with the option to tax that would benefit from simplification.

The CIOT and ATT supported ‘Recommendation 8’ made in relation to the option to tax in the Office of Tax Simplification’s (OTS) 2017 VAT report (see tinyurl.com/42s2s8ne): that HMRC should review the current requirements for record keeping and the audit trail for options to tax, and the extent to which this might be handled online. Our responses agreed that simplification from increased digitalisation for the option to tax was desirable.

The OTS VAT report also looked at simplification of the anti-avoidance legislation in VATA 1994 Sch 10 paras 12 to 17 and this was also supported in our responses, particularly around disapplication and where permission to opt is required. It was also noted that HMRC’s VAT guidance could be more helpful in understanding this area of legislation, though it is not ideal that the legislation itself does not always provide clarity.

Our responses also said that transfers of a going concern that include properties are also areas where errors occur and that this too is an area where simplification would be desirable.

The CIOT’s full response can be found at tinyurl.com/yehyvtty and the ATT’s at tinyurl.com/w5fxx37k. As the consultation moves to stage 2 in the coming months, both the CIOT and the ATT will continue to seek feedback from members, and a request for input will appear in the CIOT/ATT Weekly News emails in due course.