

Pubs with flats

Where a pub is sold or leased, and the owner has opted to tax, the price may need to be split if the property includes a residential element. It is normal in these cases to allocate 90% of the price to the commercial premises, and to charge VAT on this, and to treat 10% as for the residential part, and VAT-exempt. This has been generally understood to follow from an agreement entered into some years ago between HMRC and the Brewers' Society.

HMRC have indicated that in fact there is no formal agreement, and never was. Their view is that the 90/10 split is merely an 'industry norm' and should *not* be used if a split by actual values would give a significantly different result. It is possible that they will be issuing guidance.

In the meantime, where the seller has opted to tax:

- The 90/10 split should not be used anyway if the residential element is not going to remain residential for any time after the transaction, eg the purchaser intends to put the whole building to commercial use, or to demolish it. In this case, VAT should be charged on the whole price.
- It makes no difference whether the residential part is self-contained.
- If we are advising the buyer, we might want to challenge the 90/10 split and look for something based on actual values, at least if our client does not expect to recover the VAT. I can help in backing up this approach if need be.
- If we are advising the seller, we might want to look for VAT on more than 90% if this seems appropriate. In the probably more likely scenario that 90% seems too high, we would not suggest taking the initiative in suggesting a lower figure, but we might want to consider it at the buyer's request.

There are various other issues in these cases. The VAT treatment of subsequent conversion projects is complex, and will also determine whether in fact the buyer can recover the VAT.

If you would like to discuss this or any other VAT matter, please do not hesitate to contact us.

Elysian Associates

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