

Service charges

The UK treats most service charges as following the VAT treatment of the rent – if the property is un-opted, or residential, service charges are generally exempt.

This was put in doubt by the ECJ judgment in *Tellmer*, a Czech case where charges for the cleaning of common areas in blocks of flats were found to be subject to VAT. HMRC have tried to differentiate this on the facts from the normal UK arrangements, but it is not clear how convincing this is.

Several appeals have been lodged with the Tribunal on this. The lead case is *Field Fisher Waterhouse*, and the others are stood over behind it.

This litigation may well mean that HMRC have to concede that service charges are, after all, generally subject to VAT. It seems likely that they would only seek to implement this from a current date, but that it will apply to existing leases.

When acting for the landlord, they should be checking that their leases, licences etc, allow for any VAT to be added to service charges, even for residential property. When advising tenants is the landlord able to charge them 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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