

### **Relevant charitable property - Reduced scope of VAT zero rating**

HMRC has recently announced important changes to the VAT zero rating regime (Revenue & Customs Brief 39/09 and VAT Information Sheet 08/09). The extra statutory concession allowing zero-rating for properties used 90% or more for qualifying purposes is to be withdrawn and replaced by HMRC's interpretation that the legislative reference to "solely" requires qualifying use to be 95% or more. There will be greater flexibility in the methods available for determining the extent of qualifying use, but there will also be 'change of use' provisions enabling HMRC to 'claw back' VAT. A period of transitional relief will apply so that affected organisations can choose to apply the '90%' rules or the new '95%' rules. All potentially affected organisations should seek specialist VAT advice on this issue.

Currently, zero-rating is available for the grant of a major interest in, or the construction of, a building which is intended for qualifying use, i.e. "solely for a relevant residential or a relevant charitable purpose" (Groups 5 and 6 Schedule 8 VAT Act 1994). By virtue of extra statutory concession (ESC) 3.29, the non-qualifying use of a relevant charitable building can be ignored:

- if the entire building will be used solely for a qualifying purpose for more than 90 per cent of the total time the building is available for use;
- if a relevant part of the building will be used solely for a qualifying purpose for more than 90 per cent of the total time that it is available for use;
- if 90 per cent or more of the floor space of the entire building will be used solely for a qualifying purpose; or
- if the entire building will be used solely for a qualifying purpose by 90 per cent or more of the people using the building (on a head count basis).

If the building is zero-rated by virtue of this concession, there is currently (also by concession) no 'clawback' of VAT if the use of the building subsequently changes.

HMRC's revised interpretation of the zero-rating provisions is that the term 'solely' in the legislation can incorporate an appropriate 'de minimis' margin - in order to avoid unnecessary disputes in marginal cases, HMRC will accept that the statutory condition is satisfied if the relevant use of a building by a charity is 95 per cent or more.

An organisation can rely on this revised interpretation of 'solely' to determine whether a building is eligible for zero-rating; 'use' does not have to be calculated using one of the methods described in the ESC: any method may be used, so long as it is fair and reasonable, accurately reflects

**WE HOPE YOU FIND THIS NEWS ARTICLE HELPFUL. IF YOU WOULD LIKE TO REGISTER TO RECEIVE  
FUTURE UPDATES BY EMAIL THEN PLEASE SEND A REQUEST TO**

[info@4eyesltd.co.uk](mailto:info@4eyesltd.co.uk)

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.

actual 'use' and can be readily verified. Prior approval from HMRC for any method of calculation is not required.

The ESC will be withdrawn, subject to a 12 month transitional period starting on 1 July 2009 during which charities will be able to choose to apply the ESC or to apply the revised '95%' interpretation of the legislation; if a building is zero-rated as a result of applying this new interpretation, there will be a 'change of use' charge under part 2 Schedule 10 VAT Act 1994 if it ceases to satisfy the 95% test within ten years of completion; and HMRC will expect the use to be re-examined every year on the same basis that was originally used to determine the qualifying percentage.

The transitional period means that zero-rating certificates can be issued until 30 June 2010 in respect of construction services, provided that there has been a 'meaningful start' to the construction of the building by that date; or the acquisition of a building, provided that a 'meaningful deposit' has been paid and/ or contracts have been exchanged by that date (but this does not include the grant of an option to purchase), and the Schedule 10 'clawback' should not apply.

### ***Comment***

*This is clearly a major change in the zero-rating regime and will have some significant implications for organisations operating these type of buildings.*

*In principle, the ability to move away from the time, floor area and head count methods would appear to be welcome. In certain circumstances it might be advantageous, for example where the cost of constructing the 'qualifying' areas of a building is greater than the cost of constructing the 'non-qualifying' areas and a cost-based apportionment would result in the non-qualifying 'use' being less than 5%. However, leaving aside time, floor area and head count methods (the operation of which has itself frequently been the subject of dispute), the scope of other methods (including cost-based methods) which may be acceptable to HMRC remains to be seen, and it is therefore necessary to reserve judgment on any potential benefits of this change of policy.*

*The reduction of the 'de minimis' percentage by half and the advent of the 'clawback' provision will not be welcomed. HMRC gives no indication of the reason behind the reduction to 5% or how this figure was arrived at, nor does it seek to justify that figure or estimate the impact that it may have.*

*The new provisions are much less generous than before and the clawback provisions seem one-sided in that you could not subsequently claim retrospective zero rating for a building that had previously been standard rated. Affected businesses will doubtless want to make use of the present provisions as long as possible.*

**WE HOPE YOU FIND THIS NEWS ARTICLE HELPFUL. IF YOU WOULD LIKE TO REGISTER TO RECEIVE FUTURE UPDATES BY EMAIL THEN PLEASE SEND A REQUEST TO**

[info@4eyesltd.co.uk](mailto:info@4eyesltd.co.uk)

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.

*Businesses with property VAT issues are advised to consult VAT Property Solutions for an online assessment of the likely VAT issues. VAT Property Solutions can be accessed through our website at [www.4eyesltd.co.uk](http://www.4eyesltd.co.uk).*

**WE HOPE YOU FIND THIS NEWS ARTICLE HELPFUL. IF YOU WOULD LIKE TO REGISTER TO RECEIVE  
FUTURE UPDATES BY EMAIL THEN PLEASE SEND A REQUEST TO**

**[info@4eyesltd.co.uk](mailto:info@4eyesltd.co.uk)**

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.