

## Commercial real estate in Ireland – ESG, permitting and VAT



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**Starting with ESG, I am sure it is the case in Ireland as with the UK, that sustainability is continuing to move towards the forefront of corporate agendas?**

Yes, it is indeed. As we emerge from 2023, which is the hottest year on record, it is clear that we need to take sustainability very seriously when it comes to the built environment and keep it to the forefront of all corporate agendas in 2024.

We know that the Paris Agreement has called for global carbon emissions to be reduced by 45% by 2030 and reach 'net zero' by 2050. In this journey to 'net zero', a key statistic that we need to remind ourselves of is that the real estate sector accounts for approximately 40% of total global carbon emissions. Therefore, all real estate stakeholders will undoubtedly come under increased pressure to significantly reduce emissions resulting from the development, ownership and management of assets.

**What do you see as the consequences for assets which do not 'keep up' with increased market demand for excellent green credentials and changing legislation in relation to the energy performance of buildings?**

In order to reach 'net zero' by 2050, ambitious goals and strategies will need to be set to reduce the carbon emissions from

older/secondary buildings in particular – otherwise they will be at risk of becoming obsolete and 'stranded' in the not so distant future. In order to develop credible goals and strategies, building owners will need to collect, measure and analyse data in order to get a clear understanding of the level of carbon that their buildings are currently emitting.

The concept of an asset becoming 'stranded' will become a reality for buildings which do not keep up with increased market demand for buildings with excellent sustainability credentials and changing legislation in relation to the energy performance of buildings. A key piece of EU legislation is The Energy Performance of Buildings Recast Directive which is set to bring about significant changes to the way in which public and private buildings are constructed and maintained on a phased basis from 1 January 2026. Irish legislation implementing the Recast Directive may be seen as early as 2024.

**Is it therefore essential to develop a strategy for these secondary assets sooner rather than later?**

Yes, owners of secondary assets who consider their buildings to be at risk of becoming stranded will need to try to mitigate this by developing a secondary assets strategy – they may decide to retrofit, re-develop, re-purpose or potentially sell

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those buildings. Both the capital cost and carbon cost of carrying out the works will need to be considered. The cost of doing nothing will also need to form part of the analysis. Property and portfolio owners whose secondary assets are facing a stranding risk will need to decide on a clear strategy in respect of these assets sooner rather than later in order to avoid them being devalued.

### **Moving away from ESG now, have there been any key legislative changes in the real estate area in Ireland recently?**

Yes, a key piece of legislation is the new Planning and Development Bill 2023 which is the third largest Bill in the history of the State and represents the most comprehensive review of Irish planning law undertaken in over 20 years.

The Bill aims to introduce greater clarity, certainty and consistency to how planning decisions are made. It seeks to make planning law more user friendly for the public and practitioners alike and also seeks to create a framework which will help to ensure compliance with European and environmental obligations.

The Bill was published at the end of November 2023 and now needs to move through the Houses of the

Oireachtas (ie the Irish Legislature) before it is enacted.

### **Looking at the subject of VAT now, what is the treatment of a lease from an Irish VAT perspective? How can a landlord best protect itself from an irrecoverable VAT cost?**

All leases are exempt from Irish VAT by default. A landlord has the option to exercise an 'option to tax' which has the effect of making lease rentals subject to VAT at the 23% rate. The option to tax must be exercised in writing and is normally exercised within the lease. It is not possible to exercise an option to tax in respect of a residential letting.

There are certain instances in which the option to tax can be terminated and this can give rise to VAT costs for a landlord. Such termination can arise where: (i) the landlord and tenant become 'connected' persons; (ii) the tenant allows a person who is 'connected' with the landlord to occupy the property; or (iii) the property is used for residential purposes. Indemnities are typically included in the lease document to protect the landlord from these eventualities.

### **What is the VAT treatment of the assignment or surrender of a lease?**

For leases which were originally granted prior to 1 July 2008, the

VAT treatment of a surrender and assignment can be relatively complex and there is a formula for calculating the amount of VAT arising which is based on the amount of VAT arising on grant (which would have been based on the capitalised value of the lease).

For leases granted post 1 July 2008, VAT will arise at the standard rate on any premium payable for the assignment of such lease. VAT will arise at the standard rate on any premium payable for a surrender of such lease provided the option to tax has been exercised. VAT will not arise on a surrender where the option to tax has not been exercised. A key issue to be aware of in the context of a surrender is the issue of 'tenant capital goods', ie works which have been undertaken by the tenant in respect of which VAT has been reclaimed. In the absence of a landlord/assignee agreeing to take responsibility for such on an assignment or surrender, a VAT adjustment liability will arise for the tenant. ■

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