HMRC - VATSC48000 - Rent-Free Periods

This area of the tax has similarities with that of reverse premiums referred to in VATSC46000. In these cases commercial landlords offer prospective tenants a period of occupancy in which they do not have to pay rent. These rent waivers can be consideration for taxable supplies by tenants.

Examples of rent-free periods that are not consideration

The following are examples of instances where rent-free periods are not consideration:-

Where the rent-free periods are offered:

in order for the tenant business to fit out the premises to its specifications (thereby not being able to use the premises fully during that time), or

in order to reduce the actual rent to a market level while the lease still shows the higher level (giving the landlord more scope in setting rent for future tenants)

they are not consideration for supplies by the tenants.

When rent-free periods are consideration

However, in some cases landlords give rent-free periods directly in relation to actions their tenants undertake for the landlords’ benefit - usually carrying out building works that improve the properties. In such cases the rent-free periods represent consideration for taxable supplies by tenants to their landlords. Two cases support this:

In the Tribunal case of Port Erin Hotels (MAN/89/722) the appellant received a four year waiver of rent from its parent company landlord in exchange for its paying for alterations and improvements to the hotels.

The Tribunal found that the rent-free period was given in consideration of the works. As this was non-monetary consideration it was acceptable to regard the market cost of the works as the value of the tenants supply for VAT purposes.

In the High Court case of Ridgeons Bulk (QB [1994] STC 427), the company took a tenancy of a saw-mill from its associate landlord. As part of the agreements leading to the lease, major improvements to the premises were to be carried out by the tenant.

The High Court agreed the Tribunal’s findings that the rent-free period was consideration for the improvement works. The documents clearly indicated that the rent waiver and the works were linked and the cost of the works was generally in line with the rent waived.

It did not agree the appellant’s argument that a letter between the parties to the lease, setting out the mutual obligations of the works and granting the rent waiver, was extrinsic evidence to the case. The letter was a clear indication of the supply and consideration agreed between the parties and this was not contradicted by the subsequent lease terms.

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