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# Property Law Conference

[www.propertylawconference.co.uk](http://www.propertylawconference.co.uk)

## Service Charges and VAT

Justin Bates

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# Why is this important?

Dry and technical

But....

- 1) Financial savings (competitive advantage for managing agents)
- 2) Huge s.19 LTA 1985 issue that someone will litigate

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# VAT: an introduction

VAT Act 1994

General rule is that VAT is payable if 4 conditions are met

- (1) A supply of goods or services is made within the UK for a consideration.
- (2) The supply is made by a person who is, or should be, registered for VAT.
- (3) The supply is made in the course of or in furtherance of a business of the supplier.
- (4) The supply of the relevant goods or services does not fall into any exempt category for VAT purposes.

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# VAT: an introduction

### *Exemptions*

Letting property is an exempt transaction – s.31, Pt.2, Sch.9, 1994 Act  
-Means that rent is usually exempt from VAT

Is the service charge akin to rent?

-Is it paid by the tenant to the landlord?

-Is it in the nature of rent (i.e. is it directly incidental to the right of occupation? E.g. maintenance of the structure of the building)

If so, then no VAT chargeable

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# VAT: an introduction

*But what about other types of service charge?*

- Two considerations
- First, charges for the upkeep of common parts etc (because no accommodation supplied in that)
- Secondly, charges by someone who does not supply accommodation (e.g. RMC, RTM, Maintenance Trustee)

Obvious potential for unfairness and confusion

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# VAT: an introduction

*Extra-statutory concession*

HMRC agrees to ignore VAT rules!

VAT Notice 48, para.3.18 and VAT Notice 742 (para.12)

- Exemption for a landlord if he supplies non-mandatory service charges
- DOES apply to lessee-owned freehold
- DOES apply to RTM companies
- DOES NOT for agents who supply on behalf of landlord (or RTM)

What about RMC? What about s.24 LTA 1987 Manager?

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# *Ingram v Church Commissioners* [2015] UKUT 495 (LC)

Approves the outline raised above  
-agent/landlord distinction critical

But what about s.19? Raised but not decided

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# HMRC Response

Revenue and Customs Brief 6 (Sept 2018)

VAT Information Sheet 07/18 (Nov 2018)

In simple terms, confirming previous position and making clear that agents cannot use the exemption

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### So where are we?

- 1) Leaseholder owned enfranchisement vehicle / RTM vehicle
  - Surely take full advantage of relief?
  - Can it afford to employ directly? What would the “on” costs be of such employment? (e.g. NI, Pension etc)
  - Need advice before procuring major works
  
- 2) Commercial freeholder
  - How would you respond to a s.19 challenge? What is the difference between the increased “on” costs (recoverably through s/c) and the VAT saving?
  - Does your wider tax/group regulatory position matter?

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# So where are we?

### 3) RMC

- Has everyone forgotten them?

### 4) Urgent issue

- Fire safety
  - Waking watch
  - Remedial works

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Thank you for listening

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