

Worth knowing about:

Tax and VAT relating to commercial properties

Questions of a VAT or tax nature often arise in relation to commercial properties. This applies to rental properties as well as properties used in one's own business. And regardless of whether it is a residential property, a commercial property or a factory.

Tax

When buying real estate, the transfer sum must be divided between land, buildings, installations and movable property. If the buildings are eligible for depreciation, the purchase price must also be distributed between the individual buildings if there are several of these. It is therefore important that a distribution of the transfer sum is agreed in the transfer agreement, otherwise the distribution can be determined by the Tax Agency.

During ongoing operations, a decision must be made on the tax treatment of loan costs as well as capital gains and losses on loan rescheduling. This is treated differently and depends on whether it is a person or a company that owns the property, including whether the debt is in Danish or foreign currency.

The demarcation between deductible maintenance costs and non-deductible improvement costs can give rise to disputes with the Tax Agency, and a concrete position must therefore be taken on the costs incurred and whether they are maintenance or improvement costs. In connection with the assessment of this, the starting point is the property's condition at the time of acquisition. Special rules apply for the first three years for rental properties, where it is possible to deduct up to 25% of the annual calculated rent, provided that you have incurred costs that correspond to the calculated amount.

Repair of damage can normally be regarded as maintenance if it is a question of repairing damage that occurred during the owner's possession. However, this does not apply to damage caused by fire.

The tax treatment of state subsidies and of costs for e.g. insulation, fire protection, coastal protection, well drilling etc. can contain some special challenges, which is why attention should be paid to the tax treatment of these costs.

When selling real estate, property gain and any recovered depreciation must be calculated. The options for reinvesting the property gain must be considered.

VAT

VAT must be paid on the sale of building plots and new buildings. The latter also includes old buildings which have been rebuilt to a significant extent. A building is new until five years after completion.

VAT applies to virtually all construction costs and all operating costs. This means that there is a VAT deduction for these costs when the property is used for a purpose subject to VAT. This applies regardless of whether it is a domiciled property, a new building being constructed with a view to sale, or a rental property where the land-lord has chosen to register for VAT.

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When selling a property that can be sold without VAT, and where there has been a VAT deduction on construction costs and on repair and maintenance costs within a period of five or ten years before the sale, an adjustment obligation must be calculated, which the buyer can possibly take over.

The adjustment obligation is calculated reduced but the original VAT deduction on the costs, reduced by 1/10th or 1/5th for each year that has passed since.

The obligation becomes financially significant if the buyer changes the use of the property within the regulation period. The regulation means that VAT must be paid in arrears if the VAT deduction is reduced but can also mean repayment of VAT if the VAT deduction is increased.

The regulation obligation can only be transferred to the extent that the buyer has at least the same right to deduct VAT as the seller. If the buyer cannot or will not take over a regulation obligation, the seller must pay it to the Tax Agency.

Rental properties, which are rented out subject to VAT for business and VAT-free for residential use, contain special VAT challenges. This is because both VAT on construction costs and VAT on ongoing operating costs must be allocated. Construction costs are allocated according to square meters, while other costs are allocated according to the size of the rental income from the two groups of tenants. If the costs can be attributed to certain parts of the building, the VAT treatment will depend on whether it is the residential or commercial part.

Finally, in many cases, special rules apply to deductions for VAT on costs relating to the sale of buildings.

Overview

Below, we have listed in table form conditions where one must pay particular attention to the VAT and fiscal issues.

Purchase	New built	Operation	Sale
Allocation of purchase price	Calculation of depreciation base	Key money	Allocation of sales price
Cash conversion of purchase price	Determination of time of use	Maintenance versus improvement	Cash conversion of sales price
Calculation of depreciation base	VAT on building costs	Compensation from/to tenants	Calculation of taxable property gain
Calculation of immediate depreciation basis	Calculation of building VAT when using own employees	Capital gains/losses on loans	Calculation of recovered depreciation
Special circumstances regarding the purchase price	Energy taxes, including meter distribution	Tax treatment of loan costs	Reinvestment of property gain
Possible takeover of VAT adjustment obligation	Energy taxes, including possible establishment of process area	Calculation of tax depreciation and immediate depreciation	Special circumstances regarding the sales price, including rent guarantees etc.
Possible voluntary VAT registration	Possible voluntary VAT registration	Planning of reconstruction for optimal use of immediate deduction	Possible transfer of VAT adjustment obligation
Is the purchase of the property VAT liable and any deduction hereof?	Is the property built with a view to sale, own use, VAT free or VAT liable rental purposes	Update of VAT adjustment obligation	Any discontinuation of voluntary VAT registration
Is the property purchase with a view to sale? Is it VAT free or VAT liable		Reinvoicing of energy taxes to tenants	VAT deduction for sales costs and any costs for demolition
		Construction VAT when using own employees for maintenance	Is the sale VAT-exempt or VAT liable? Any compensating adjustment of prior deduction on VAT liable sale
		Correct calculation of VAT deduction. Deduction depends on the cost type	

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