VAT and Solicitors

This document should be read in conjunction with sections 5,28(3), 28(3A), 37, and 46(1)(a) of the VAT Consolidation Act 2010 (VATCA 2010)

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Note: This manual is currently subject to review and may not reflect up-to-date position. Most recent version.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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Introduction

This guidance sets out the VAT treatment of solicitors in relation to VAT registration, the VAT rate, the taxable amount (including outlay), and the interaction with Professional Services Withholding Tax (PSWT).

It also includes a Memorandum of Understanding between the Revenue Commissioners and the Law Society of Ireland concerning the audit of the tax returns of solicitors and solicitors' practices.

Further information on place of supply, accounting for VAT, VAT deductibility, VAT records and invoices are available on the Revenue website.

1. VAT registration

All independent solicitors, that is, solicitors who are not employees, are obliged to register for VAT if their annual turnover exceeds the VAT registration threshold for services.

State Solicitors are not obliged to register in respect of their activities as State Solicitors. However, they are obliged to register if their annual turnover from other professional activities exceeds the VAT registration threshold for services.

Applications for registration are made using Revenue's online system (ROS).

2. VAT rate

The VAT rate for solicitors' services is the standard rate.

3. Taxable Amount

The taxable amount for VAT is the amount of the solicitor's professional fees together with all taxes (other than VAT), commissions, costs and charges which the solicitor is entitled to receive for his or her services.

Expenses incurred by a solicitor in the course of, and for the purposes of, carrying out their professional services are regarded as part of the solicitor's charges and are taxable.

Outlays made by a solicitor on behalf of a client are not regarded as part of the solicitor's professional fees and are, therefore, not taxable.

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3.1 Outlays

The outlays which are not liable to VAT in the hands of a solicitor include:

- Advertising
- Company Registration, Fees including Company Seals
- Counsels' Fees[1]
- Court Fees and Fines
- Deposits (such as house deposits paid by clients)
- Land Registry Fees
- Photographs of Court Exhibits
- Registration of Deeds Fees
- Search Fees
- Stamp Duty and other Duties and Taxes
- Surveyors' and Estate Agents' Fees
- Valuation Services (by Actuaries and Valuation Office)
- Witnesses' Fees and Expenses.

If possible, these outlays should be invoiced directly by the supplier to the client (although transmitted through the solicitor).

The solicitor may not be involved at all, but should ensure that all invoices relating to such transactions are in the name of the client. If they are not, then the client, if VAT registered, will not be entitled to a deduction for the tax.

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[1] When Counsel (Barrister) has received payment of their fees, he or she will issue to the instructing solicitor, at the solicitor's request, a combined VAT invoice / receipt drawn up in the name of the client.

3.2 Expenses regarded as part of a solicitor's fee

Those expenses which are regarded as part of a solicitor's fee for professional services include:

- Courier Fees
- Hire of Consultation Rooms from Incorporated Law Society
- Hotel Costs
- Photocopying
- Postage
- Summons Serving Fees
- Telephone Costs
- Town Agent Fees
- Travelling Costs.

3.3 Commissioner for Oaths fees and Notary Public fees

Commissioner for Oaths fees and Notary Public fees are not taxable for VAT purposes.

4. Services provided to banks and other lenders

Solicitors may be engaged by banks or other lenders in connection with lending or restructuring loan obligations between the lender and a borrower. In such circumstances, the solicitor issues their invoice to the lender that has engaged them and received the service.

The solicitor cannot invoice the borrower as they have not provided any services to the borrower. The borrower is not entitled to reclaim the VAT on the solicitors' invoice that issued to the lender.

The lender cannot issue a VAT invoice to the borrower for the solicitor's services as they have not supplied legal services to the borrower.

5. Services provided in respect of persons indemnified under an insurance policy

Where a solicitor provides legal services to a person who holds a policy of insurance that will discharge the solicitor's fees, the solicitor is treated as supplying those services to the insured person and not to the insurance company. The fact that the insurer ultimately bears the cost does not change who receives the service.

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The solicitor should therefore issue invoices to the insured person only.

The VAT treatment of the supply, including the place of supply of the solicitor's service, is determined on the basis that the insured person is the recipient of the service.

6. Professional Services Withholding Tax (PSWT)

PSWT withheld from payments for professional services is deemed, for VAT purposes, to have been received by the solicitor. The VAT is calculated on the full payment and not the net amount received by the Solicitor.

Example 1

A solicitor has charged €1,230 (including VAT) for her fees. Her client is obliged to operate PSWT on the payment which amounts to 20% of the fee (the VAT exclusive amount i.e. €1,000). As such, her client pays her €1,030 after deducting the PSWT of €200.

The solicitor is deemed to have received €1,230 for VAT purposes and must account for VAT in the amount of €230 in her next VAT return.

More information on the Professional Services Withholding Tax (PSWT) is available on the Revenue website.

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Appendix I

Memorandum of Understanding between the Revenue Commissioners and the Law Society of Ireland concerning the audit of the tax returns of solicitors and solicitors' practices

1. The purpose of this Memorandum of Understanding

The purpose of this memorandum of understanding is to clarify certain procedural matters that may arise in the audit of the tax returns (Income tax, Capital Gains tax, VAT, PAYE/PRSI, 3rd Party returns etc.) of solicitors and solicitors' practices.

2. Audit focus

The primary purpose of the Revenue audit of solicitors or solicitors' practices is the audit of the tax returns of the individual solicitor or partnership, or both, as the situation demands. In carrying out these audits Revenue officials will not be collecting, collating or verifying client information.

However, Revenue audit programmes include verifying or cross-checking tax related financial information on transactions from one taxpayer's business records to those of another taxpayer. Similar checks are carried out in all businesses.

3. Information or professional advice of a confidential nature given to clients is not sought by Revenue auditors

Confidential information which does not have a bearing on the tax liability of any solicitor is not sought by Revenue officials.

Revenue officials fully recognise the concept of legal advice privilege and litigation privilege. Revenue officials are entitled to access the names and addresses of clients subject to the exclusions. See the note regarding 'Exceptional Circumstances', below.

Tax legislation obliges solicitors to give authorised Revenue officials access to books, records and other documents, information and explanations for the purposes of verifying the tax liabilities of any individual solicitor or practice. Revenue officials are also entitled to reasonable assistance in this regard.

4. Special cases

In addition to paragraph 3, in certain limited situations, where there are exceptionally sensitive issues, a solicitor may request that the name and address of the client, or certain aspects of the case, should not be disclosed. Revenue officials will agree to conduct the audit without the client's name and address, or the issues being revealed, provided the non disclosure does not restrict the audit process, and that sufficient meaningful information is supplied to the Revenue official to enable the tax issues to be verified.

Bearing in mind the confidentiality obligations on Revenue officials, it is expected that situations where this clause might be invoked will be exceptional.

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Where there is disagreement regarding disclosure in these circumstances, the solicitor may request a review by the Principal Officer to whom the Revenue official reports or a review by the internal/external reviewers in accordance with Revenue Complaint and Review Procedures.

5. Access to books, records, documents and information and explanations relating to tax.

Revenue officials will seek access to books, records, documents and information and explanations relating to tax so as to verify the amounts of professional income and other income earned within a specified period, and also to verify the correct accounting for VAT and the correct operation of PAYE/PRSI.

Broadly in general terms, access is sought, where appropriate, to the following:

- The underlying records (cash book, cheque journal, etc.), the accounts linking papers which link the underlying records to the annual accounts, including the Trial Balance, Nominal Ledger, Journal entries, Bank account reconciliation, client Ledger balances reconciliation and reconciliation of opening and closing accounts balances.
- Records relating to fees receivable and profits earned, the timing of earnings, valuations of debtors and work in progress, timely transfer of costs to office account, treatment of clients' outlay, treatment of office and personal expenditure, reconciliation of clients' balances with balances in clients' bank accounts.
- Access is sought to individual client's ledger accounts, correspondence, information and explanations so as to verify figures in the accounts, the status or timing of some transactions such as the source or destination of sums passing through the client ledger accounts, the commencement and ending of separate steps in litigation or other services giving rise to payment of fees, the valuation of work in progress, the determination of bad debts and other income or expense related transactions.
- Records and documents relevant to VAT.
- Records of employee emoluments relevant to PAYE/PRSI.
- All bank accounts (current, loan, deposit etc.), client accounts, office accounts and private accounts.
- Computations of taxable profits and distribution of profits among the partners.
- Documents relating to various claims to relief and allowances.
- The correct accounting for any relevant tax under any provisions of the Taxes Acts.

The above is an indicative list only and other records etc. may be required depending on the circumstances of any particular case.

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Access is sought only to such practice correspondence that is likely to assist in verifying issues, such as, checking the timing of transfer of fees to office account, valuation of debtors and work in progress, verifying creditors and other income or expense related transactions. Where files are sought the solicitor may remove from the files, where relevant, items attracting legal advice privilege, litigation privilege and details of tax advice given to clients.

Where there is disagreement regarding disclosure in these circumstances the solicitor may request a review by the Principal Officer to whom the Revenue official reports or a review by the internal/external reviewers in accordance with Revenue Complaint and Review Procedures.

6. Review

It is agreed that this Memorandum of Understanding will be reviewed as necessary, and, in any event, after two years in operation.

NOTE re Legal Advice Privilege: The basic rule is that communications between a lawyer in his professional capacity and his client are privileged from production if they are confidential and for the purposes of seeking or giving legal advice to the client. It does not apply to legal assistance which covers many tasks which a solicitor carries out for clients.

NOTE re Litigation Privilege: The basic rule here is that communications, after litigation has been commenced or after litigation has been contemplated, between (a) a lawyer and his client, (b) a lawyer and his non professional agent or (c) a lawyer and third party, for the sole or dominant purpose of such litigation (whether for seeking or giving advice in relation to it, or for obtaining evidence to be used in it, or for obtaining information leading to such obtaining), are privileged from production.

NOTE re Exceptional Circumstances: In addition to the privilege items outlined in the preceding footnotes account will also be taken of Mr. Justice Kelly's dicta in Miley v Flood [HC 2000 No. 310 J.R. (Kelly J) 24 January 2001]; "..... a solicitor is not entitled to maintain a claim to privilege in respect of the identity of his client. A dilution of this general principle arises where (a) the naming of the client would incriminate or (b) where the identity of the client is so bound up with the nature of the advice sought, that to reveal the clients identity would be in fact to reveal that advice".

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