



## Aggregates Levy review

The Government has announced a review of the Aggregates Levy, following the conclusion of long-running litigation concerning state aid issues, and a commitment to devolving the Levy to Scotland. The Aggregates Levy has not been significantly amended since its introduction in 2002, and generates up to around £410m annually. The wide-ranging review will cover the Levy's objectives and impact; the effectiveness of its current design; the environmental and business context, and possible reforms. Representations are to be made by 5 July 2019. Read the discussion paper at: <https://www.gov.uk/government/publications/review-of-the-aggregates-levy/review-of-the-aggregates-levy-discussion-paper>

## Zero-rating certificates: Reasonable excuse

Certain Relevant Charitable and Relevant Residential Purpose building projects can only be zero-rated when the end user has issued a certificate to the main contractor. This limits the zero-rating to that supply, so sub-contractor's supplies to the main contractor are not zero-rated.

### Example

A taxpayer was a not-for-profit sports organisation which built a clubhouse on leased land. The clubhouse was to be available for use by the whole community in a similar way to a village hall. Having read HMRC's guidance, and consulted with their accountants and tax advisers, both confirmed that the building work could be zero-rated and a certificate was issued.

HMRC's view was that because the clubhouse was not owned, administered or organised by the local community, and was not freely available to the larger community, it did not qualify for the zero-rate. A substantial penalty was levied on the taxpayer on the basis that it had issued an incorrect certificate.

The taxpayer appealed on the basis that they had no priority over the building, and that the building was promoted as a facility for the whole community, rather than a specific group. Furthermore, if the work was standard-rated, rendering the certificate incorrect, there was a reasonable excuse and as such the penalty should not have been issued.

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The First Tier Tribunal (FTT) agreed with the taxpayer on both counts; the clubhouse was used in a similar manner to a village hall and so the supply should have been zero-rated, and if this decision was deemed incorrect, there was a reasonable excuse for issuing the certificate and so the penalty should be withdrawn.

HMRC appealed to the Upper Tier Tribunal (UTT). This appeal had three main contentions. The first was that the FTT had not provided adequate reason as to how the intended use of the clubhouse was similar to a village hall. The second was that the FTT did not consider if the clubhouse's activities constituted a business; and finally, that the FTT was incorrect in concluding that there was a reasonable excuse for issuing a zero-rated certificate.

HMRC succeeded on the first two points. However, the UTT agreed that the taxpayer had a reasonable excuse in respect of believing the issue of the certificate was correct and therefore no penalty could apply.

Although HMRC were successful in arguing that the building did not qualify for the zero-rate, as the taxpayer had a reasonable excuse, no VAT or penalty was due. In addition, HMRC appear to have not pursued the builder for incorrectly zero-rating their supply (presumably on the basis that the builder acted in good faith). It also shows that VAT relief for 'village halls and similar' is quite narrow in its application, and professional advice should be sought before any certification is made.

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## DIY house builder claims

A taxpayer owned a barn and several outbuildings. One of the outbuildings had been converted into a games room and then subsequently into living accommodation ('the annexe') for a relative. After the relative died, the taxpayer decided they would demolish the annexe, build a new house in its place and then sell the barn. They made an application to HMRC for a refund under the DIY Builders Scheme for the VAT incurred on constructing the new house, but HMRC rejected the claim.

In appealing this decision, the sole issue was whether the construction of the new house constituted 'the construction of a building designed as a 'dwelling'' under the VAT legislation. HMRC argued that the building was not 'new' because the existing building had not been completely demolished to ground level. This was on the basis that whilst the annexe had been demolished, the barn was still standing. HMRC considered the annexe and the barn to be one building.

The Tribunal agreed with the taxpayer that there was an alteration to an existing building and that the alteration created a new dwelling.

This shows that HMRC challenge DIY house builder claims. Whilst it is important that HMRC guidance is carefully reviewed and followed to ensure that the VAT is properly recoverable, the grounds for rejection should be considered as HMRC's rationale is not always correct.

We have had a few clients contact us regarding the DIY scheme where they have been advised that they can buy the building materials at the zero-rate. This is not the case. The purpose of the scheme is to enable the homeowner to recover the VAT charged on the building materials – the same VAT position for most developers.

If you are doing work for a client who is looking to use the DIY scheme, there are strict conditions and deadlines to be met and professional advice should always be sought about what can and cannot be claimed.

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# Annual Tax on Enveloped Dwellings (ATED)

ATED is an annual tax charge, payable mainly by companies that own UK residential property valued at £500,000 or above.

The ATED regime also applies to a partnership with corporate members, and a collective investment scheme, such as a unit trust or open-ended investment company.

If a property falls within ATED, an annual return must be submitted to HMRC along with the tax payment. The return for the period from 1 April 2019 to 31 March 2020 is based on property valued on 1 April 2017 (or the purchase price if acquired later). The ATED return for this period is due by 30 April 2019.

ATED applies to properties that are dwellings. A property is a dwelling if all or part of it is used, or can be used, as a residence (for example, a house or flat), or is suitable for use as a dwelling and is valued at more than £500,000. If the property comprises flats, then each flat is valued separately.

There are reliefs available against the ATED charge. However, even if you are eligible for one of these reliefs to the extent that there is no tax payable, you must still submit a return and make a claim for the relief by completing a Relief Declaration Return. Again, the deadline date for the submission of this return is 30 April 2019. These returns can be completed and submitted to HMRC online. In order to be able to claim a relief against ATED, the property must be either:

- Let to a third party on a commercial basis and not occupied (or available for occupation) by anyone connected with the owner at any time;
- Open to the public for at least 28 days a year on a commercial basis i.e. stately homes;
- Being developed for resale by a property developer;
- Owned by a property trader as the stock of the business, or for the sole purpose of resale;
- Repossessed by a financial institution as a result of its business lending money e.g. equity release schemes;
- Used by a trading business to provide living accommodation to employees, where the employee has less than 10% interest in the company;

- A farm dwelling occupied by a farm worker or a former long-serving farm worker;
- Owned by a registered provider of social housing.

There are also exemptions for:

- Residential property owned by a charity and held for charitable purposes;
- Properties held by public bodies, and bodies established for national purposes;
- Properties conditionally exempt from Inheritance Tax (IHT).

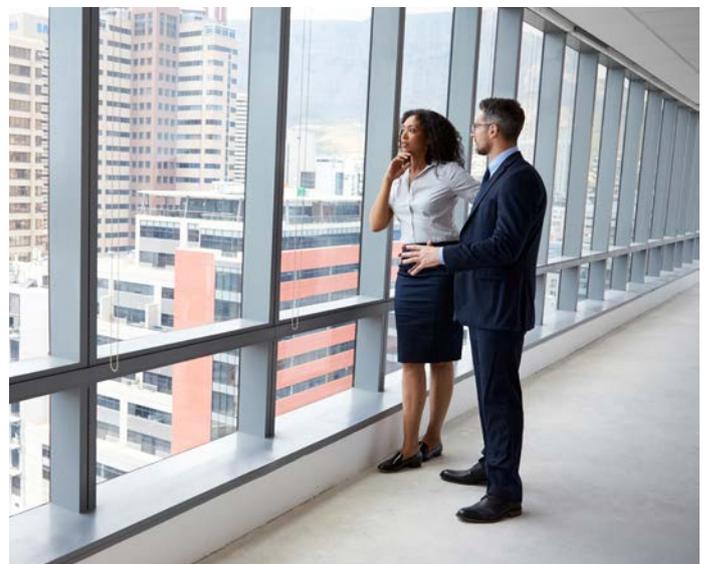
If you fail to complete the ATED return by 30 April 2019, various penalties will apply, which follow the self-assessment rules:

- Initial penalty of £100 for the late submission of the return;
- Daily penalties of £10 per day, after your return is three months late.

If your return is six months late, a further penalty of £300, or 5% of HMRC's estimation of your liability to the ATED tax (whichever is higher), will apply. A second further penalty of £300, or 5% of HMRC estimation of your liability to the ATED tax, (again, whichever is higher) will apply if your return is 12 months late.

HMRC takes a very strict view on this and are charging penalties for late returns even where there is no tax due. If you need any advice or assistance please contact us.

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# VAT liability on domestic service charges

HMRC have issued an information sheet regarding the incorrect interpretation of the VAT exemption concession for all mandatory domestic service charges.

The concession only arises when the occupants are a mix of leasehold tenants and freeholders, and enables the landlord's supply to the freeholders (which should be standard rated as it's not linked to the supply of property) to also be treated as exempt if the landlord chooses to. This could impact on the VAT recovery for the landlord.

Case law also established that if the landlord used a property management business to provide the services, the property management business cannot use the concession. This is because the property management business is making its supply to the landlord, not the tenant, even though they collect payments from the tenant.

The information sheet looks to clarify the position to ensure that property management businesses aren't mistakenly applying the concession (i.e. exempting their services to the landlord). If this applies to you and you need to make adjustments to reflect the correct VAT treatment, please contact us for advice on how to make the relevant adjustments and declarations.

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## Making Tax Digital (MTD)

From 1 April, relevant businesses will have to maintain certain trading information and submit VAT return figures under the MTD requirements.

Here are a few important facts to bear in mind:

1. The MTD regime only applies to businesses making taxable supplies (i.e. those subject to VAT at 0%, 5% or 20%) in excess of the VAT registration threshold, which is currently frozen at £85,000 in a consecutive 12 month period. Therefore, some VAT registered businesses, such as landlords with a portfolio heavily weighted towards residential property (which is an exempt supply), may not be subject to MTD.
2. MTD is deferred until 1 October 2019 for VAT groups and businesses on Payments on Account. Check the HMRC website or ask your advisers to check if you're a deferred business.
3. The MTD regime applies to VAT returns that start on or after the 1 April (or 1 October). A business that has a VAT return period ending 31 May will need to apply MTD rules for their 08/19 VAT period, which has a due date of 7 October.
4. There is an option to buy in bridging software to enable MTD compliant submissions, rather than update your existing software. There are several providers available, however this is a real 'buyer beware' scenario as most products haven't been verified for stability by the accountancy profession.
5. Once the right software is in place, that's not the end of the process. If you submit your own VAT returns you will still need to apply to use HMRC's new MTD portal to submit the relevant VAT information.
6. If you have an agent to submit your returns please ensure that they have enrolled you on to their Agent's Services Account (ASA). However, the agent should only register your business as the submission period approaches. If you are on the 08/19 VAT stagger (see point 3 above), your agent won't register you on their ASA until nearer the time for the first MTD submission.

If you have any questions about MTD, please contact us.

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# Service Charges in Commercial Property

The Royal Institution of Chartered Surveyors (RICS) has published a new edition of Service Charges in Commercial Property, due to take effect from 1 April 2019.

The aims and objectives of this publication are to:

- Improve general standards and promote best practice, uniformity, fairness and transparency in the management and administration of service charges in commercial property;
- Ensure timely issue of budgets and year-end certificates;
- Reduce the causes of disputes and to provide guidance on resolution, and
- Provide guidance to solicitors, their clients (whether owners or occupiers) and managers of service charges in the negotiation, drafting, interpretation and operation of leases, in accordance with best practice.

RICS members and regulated firms should note that this has been issued as a professional statement rather than a Code of Practice, and whereas previous codes were merely guidance, the new Statement sets out some mandatory requirements.

These mandatory requirements represent what is considered to be an acceptable standard of performance and those involved in the management of service charge accounts must act in accordance with the following:

1. All expenditure that the owner or manager seek to recover must be in accordance with the lease.
2. Subject to certain fixed percentage or fixed amount instances, owners and managers must seek to recover no more than 100% of the proper and actual costs of the provision or supply of the services.
3. Owners and managers must ensure that service charge budgets, including appropriate explanatory commentary, are issued annually to all tenants.
4. Owners and managers must ensure that an approved set of service charge accounts showing a true and accurate record of the actual expenditure constituting the service charge are provided annually to all tenants.
5. Owners and managers must ensure that a service charge apportionment matrix for their property is provided annually to all tenants.

6. Service charge monies (including reserve and sinking funds) must be held in one or more discrete bank accounts.
7. Interest earned on service charge accounts – or where separate accounts per property are not operated – a proper and reasonable amount of interest calculated on normal commercial rates must be credited to the service charge account after appropriate deductions have been made.
8. Where acting on behalf of a tenant, practitioners must advise their clients that if a dispute exists, any service charge payment withheld by the tenant should reflect only the actual sums in dispute.
9. When acting on behalf of a landlord, practitioners must advise their clients that following resolution of a dispute, any service charge that has been raised incorrectly should be adjusted to reflect the error without undue delay.

To underpin and support these mandatory requirements, the professional statement also explains core principles for property owners and managers in relation to:

- Recoverability of service charges;
- Issue of budgets and audited accounts;
- Apportionment of service charges;
- Relationship with lease terms;
- Holding service charges, and accounting for interest;
- Dealing with disputes.

It should also be noted that while the professional statement provides mandatory obligations, it cannot override the lease, and it is the lease that should outline the way in which service charges are to be accounted for and the costs that can be recovered.

The professional statement recommends that annual statements of service charge expenditure should be reviewed by an independent accountant. At Rickard Luckin our Construction, Land and Property team have the necessary skills and wealth of experience to assist with the preparation of service charge accounts.

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## The Wernick Group

### Current Business Makeup

The Wernick Group has been family owned and run since it was founded in 1934. With 35 sites and over 650 employees across the UK, the Group can offer any service relating to modular and portable buildings, across their four main trading companies.

- Wernick Hire provide a huge range of temporary buildings to their clients, primarily in the construction sector, but also provides for the education and healthcare sectors, among others.
- Wernick Buildings designs, manufactures and installs bespoke permanent modular buildings, from single classrooms to multi-storey hospital blocks.
- Wernick Refurbished Buildings specialises in the renovation of older or pre owned buildings, giving them a new lease of life
- Wernick Events specialise in short term hires to some of the biggest festivals and outdoor events in the UK.

The comprehensive range of services offered across the Group allows them to work in a wide variety of sectors; from construction site accommodation and industry to education, healthcare and commercial clients, as well as some of the UK's biggest festivals.

Chairman, David Wernick, is the grandson of founder Samuel Wernick. His son, Jonathan, is Deputy MD of Wernick Hire and Marketing Director of the Group.

### History

While today Wernick Group delivers multi million pound projects nationwide, its origins lie in a much more humble construction; poultry crates. A side-line to the poultry business Samuel Wernick set up in the 1920s, this would be the start of the Wernick family's business enterprise.

The side-line soon took over, and by 1933 Sam was displaying a sign outside the family home that read 'Sheds For Sale – Enquire Within'. The following year the business was registered as a limited company and although initially growing slowly, over the years the product range began to evolve. Sheds and chicken coops were joined by garages, chalets and a variety of flat-pack and 'sectional buildings', as they were known at the time.

As a company, Wernick were never shy about exploring potential business opportunities. At the beginning of the 1970s, according to meeting minutes, the Board agreed to 'set machinery in motion for buildings on hire'. The first dedicated Wernick Hire depot opened in 1977 in Brownhills in the West Midlands and by 1979 there were 200 cabin units in the fleet.

The move from a range of pre-designed products for sale to a design and build approach began with the acquisition of Secometric in 1980. A newspaper article from the time noted that Wernick had "progressed from the role of building garden sheds to many of the more sophisticated portable buildings of today. Children are educated in them, thousands do office work in them. Many more spend happy leisure hours in the recreation centres they house," before



"Even if you are on the right track, you will still get run over if you don't keep moving forward."

David Wernick, Chairman of  
The Wernick Group



continuing, “enterprising salesmen backed up by reliable products from a concerned and involved workforce. This is the stuff of which success in the struggling 80s is made.”

The move from timber to steel frame started in 1989 with the purchase of Swiftplan Buildings based in Neath, South Wales, which by 2000 would take care of the entire Group’s production. In 2015 production is moved again, this time to a larger and more modern site in Port Talbot, South Wales to keep up with ever increasing demand.

Meanwhile, the Group expanded with a raft of acquisitions throughout the 1990s and 2000s, including PK Accommodation, later renamed to Wernick Refurbished Buildings, which specialised in the sale of refurbished modular units. Acquisitions also brought units like ticket booths and sleeping accommodation into the fleet, perfectly tailored to serve the events market. This resulted in the launch of Wernick Event Hire in 2006.

Today, the Group employs over 650 employees across 35 locations throughout the UK, including new manufacturing facilities for Wernick Buildings and Wernick Refurbished Buildings.



## Recent Achievements

This long and sometimes challenging journey has enabled Wernick to become a leader in the modular building industry. A recent highlight is the completion of the Active Office at Swansea University; the first energy positive office building in the UK.

Produced for SPECIFIC, an Innovation and Knowledge Centre based at the University, the building is designed to generate more energy than it uses over the course of a year, and SPECIFIC currently predicts it will generate an excess of 4MWh.

SPECIFIC hopes that the Active Office will demonstrate that buildings can be energy positive, using only commercially available technology. The high performance building fabric in Wernick’s permanent building system played an important role in achieving this by ensuring the solar generated energy wasn’t lost through the walls, windows and doors.

A similarly environmentally friendly ethos has been evident at Wernick Hire, who have invested £23 million into eco-friendly assets for their fleet over the past two years. Wernick Hire’s fleet is industry leading, with even basic site welfare units available with energy saving features.

## Reasons for Success

Wernick have always had quite a straightforward approach to business; deliver great products supported by great service and keep the customer happy.

Simplicity is a key tenet of the Group. One example can be found in the management structure, where chains of command are kept as short as possible





to allow decisions to be made quickly and keep senior managers close to customers.

Senior management, and indeed most staff in Wernick, are likely to have been with the company a long time. The Group's policy of providing opportunities for training advancement and promoting from within have led to better staff retention and a lot of long service awards to hand out every year. One employee, joining the company straight from school has been with the company for 50 years.

While customers can be confident their projects are in experienced hands, they still need to know the product is going to meet their needs. Wernick invest heavily in ensuring their standing fleet doesn't become outdated, and their permanent building systems are under a process of continual improvement to make sure they can meet and exceed the expectations of customers

It might be a simple approach, but it has allowed the Group to weather over 80 years in business.

## The Future

To remain a market leader, Wernick knows it needs to keep innovating. These are turbulent times for the construction industry, but Wernick has responded to these challenges with a range of future-proofed new products.

The hire fleet aims to become even greener, with units capable of drawing energy from a number of renewable sources including wind and solar. Trials are also currently being run on the use of hydrogen cell technology, which runs silently and have zero carbon emissions.

A new permanent construction system has also been designed with a focus on industry best practise around fire safety and improving building performance and factory efficiencies. To demonstrate this new system's potential, the Group has chosen to use it as part of its £3million

Head Office redevelopment. The project will involve the construction of two new buildings and the demolition of the existing offices to increase both office space and yard space for the Hire depot.

One of the new buildings will be used by the Wernick Buildings and Wernick Hire staff based in Wickford. The second building, to be used by Group departments including Finance and HR, aims to show the quality and level of design that can be achieved with offsite construction.

The two-storey building will be given a modern external appearance through the use of a variety of cladding finishes including a brise soleil feature on one elevation, which will also serve the purpose of protecting occupants from bright sunshine.

Another example is the two-storey atrium with curtain walling, which not only emphasises that this office belongs to a company that turns over more than £120million annually but, along with the large open plan offices, also addresses the misconception that the use of modular limits the internal spaces that can be achieved. Similarly, the use of exposed CLT features will reflect its use in the floor construction, which delivers a high performance finish similar to that of concrete. Performance is key to the new head office, which has been designed to achieve a BREEM rating of Excellent.

While this flagship project intends to demonstrate how far modular buildings have come, it also represents the continued success of the Wernick Group, and the belief that reliable products from a concerned and involved workforce weren't just a recipe for success in the 80s, but will last for the next 80 years as well.

The overriding ethos for the Company is summed up by the oft-repeated saying, quoted by David Wernick: "Even if you are on the right track, you will still get run over if you don't keep moving forward".

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