

## **MOTOs and VAT**

This guide has been written in conjunction with HMRC and the following principles and guidance have been agreed.

### **1. What is a MOTO?**

MOTO stands for Memorandum of Terms of Occupation and is an agreement between two Crown Bodies which allows them to **share the costs** of occupying a building or part of a building in cases where the Crown Body looking to the share costs (with another Crown Body) has either:

- a) A short-term leasehold arrangement with a private or public-sector landlord;
- b) A long-term leasehold arrangement with a private or public-sector landlord;
- c) A PFI (Private Finance Initiative) arrangement in relation to the building; or,
- d) Holds the freehold

Costs shared under a valid MOTO are not supplies for VAT purposes (they are non-business) and so are Outside the Scope of VAT.

### **2. Parties involved in a MOTO**

The Crown Body that makes the rental payments or the PFI payments to either the private or public-sector landlord, or, the Crown Body that holds the freehold, is known as the '**major occupier**'. The Crown Body paying their share of the costs to the major occupying Crown Body under a MOTO is known as the '**minor occupier**'. It is possible for there to be multiple minor occupiers under separate MOTOs (with the same major occupier) relating to a single building.

### **3. When can a MOTO be set up?**

The underlying principle is that MOTO agreements can only be used to share costs **between Crown Bodies**. Non-Crown bodies cannot enter into MOTOs and costs charged onto non-Crown Bodies should be treated as normal business activities and VAT should be charged as required depending on the exact nature of the supply. For example, a supply of leased accommodation is Exempt for VAT purposes unless the Crown Body has opted to tax. Please see section 6 for further guidance on non-MOTO occupancy agreements

Examples of **Crown Bodies** include: Government Departments, Executive Agencies, Crown NDPBs (e.g. HSE, HSC & ACAS), Government Department Trading Funds, Non-Ministerial Departments or any other body legally defined to perform on behalf of the Crown.

**Non-Crown** public bodies that have their own legal personality (i.e. set up by statute) would not qualify as a Crown Body and examples include: Executive Non-Departmental Public Bodies (NDPBs), Non-Executive NDPBs, Tribunal NDPBs, Advisory NDPBs and bodies set up under the Companies Act.

When **initially** setting up a MOTO, the **major occupier must be a physical occupant of the building** for a MOTO to apply. Otherwise they are not simply sharing costs, but in fact making a business supply, and so VAT should be charged as required depending on the exact nature of the supply. There may be scenarios where a major/minor occupier needs to vacate part of a building, whilst still retaining any MOTO agreements; please see section 5 for such scenarios, and section 6 for further guidance on non-MOTO occupancy agreements.

Below is an indicative list of the type of costs that can be shared under a MOTO, and scenarios where costs cannot be shared under a MOTO. The list is not exhaustive.

**Includes:**

- Maintenance charges
- Refurbishment charges
- Supplier Admin charges
- Rents and Service charges made by the Landlord
- Rates
- Utilities

**Excludes:**

- Shared buildings where each Crown Body has an individual lease with the private Landlord of a property
- Recharges of costs to non-Crown NDPBs (or those that are not legally defined to perform on behalf of the Crown) for their share of building costs; these are business supplies
- Costs unrelated to the building or accommodation. E.g. IT services, staff supplies.

#### **4. How to deal with VAT in a MOTO agreement**

Under a MOTO, the **major occupier is responsible for all VAT payments and for recovery of VAT** (where applicable). The minor occupier should not have to make any VAT payments or VAT recoveries in relation to charges under a MOTO agreement.

If VAT recovery is possible under the Contracted-Out Services (COS) headings, the major occupier in a MOTO agreement should recover VAT on services used by both the major and Crown Body minor occupiers. The recharge made to the Crown Body minor occupier should be net of the recoverable VAT, and the invoice raised as 'Outside the Scope' of UK VAT.

It is likely that any VAT recovery made by the major occupying Crown Body would need to be considered under COS Heading 21, COS Heading 35, or COS Heading 53 for PFI accommodation arrangements. Please note: COS Heading 21 only allows VAT recovery where the Crown Body holds the short-term or long-term leasehold or freehold. Leases signed in the name of the Secretary of State for Communities and Local Government (MHCLG) on behalf of the Crown Body will meet this condition. Further guidance on COS Heading 21 has been published by the TCOE [here](#).

If the major occupier incurs irrecoverable VAT on costs for a service which is not covered under the COS Headings, (such as the rent and integral services costs charged by a private Landlord as part of the rental agreement), the level of the contribution from the Crown Body minor occupier should be

set to include the irrecoverable VAT. The invoice raised should still be 'Outside the Scope' of VAT and no Output VAT should be charged.

If the major occupier makes supplies to the minor occupier unrelated to the accommodation or building (e.g. IT services, staff supplies), then these are supplies made outside of the MOTO agreement, and therefore VAT must be charged as required depending on the exact nature of the supply.

#### **5. What happens to a MOTO agreement if the major occupier/minor occupier(s) vacate their space during the term of a MOTO?**

Where the major occupier is in a short-term leasehold arrangement, or holds the long-term leasehold or freehold then:

- If the **major occupier 'contracts-out'** certain functions and subsequently leases or sub-leases its space to a private sector contractor, the major occupier would be able to retain any MOTO agreements with the minor occupier(s), as the major occupier would still retain an interest in the building.
- If the **minor occupier(s) 'contracts-out'** certain functions and subsequently sub-leases its space to a private sector contractor, the MOTO agreement between the major and minor occupier would be suspended for the time that the private sector contractor occupies its space. If the private sector contractor then vacates the space and the original minor occupier moves back in, then the MOTO agreement would return from suspension, providing that the agreed MOTO term has not expired.

Where the major occupier is in a PFI arrangement for the building then:

- If **either the major or minor occupier(s) 'contract-out'** certain functions, and subsequently vacate their space for a private sector contractor, this may require the MOTO(s) to be terminated to comply with the PFI contract terms. Costs charged would then represent a business supply and VAT should be charged as required depending on the exact nature of the supply. Please see section 6 for further guidance on non-MOTO occupancy agreements.
- If Machinery of Government (MoG) changes take place meaning that functions of a major occupier undertaken in a particular property transfer to another GD, it may be possible to set up a MOTO agreement between the major occupier and the GD to whom the functions have been transferred (who would become the minor occupier), even though the major occupier is no longer physically in the property; this would depend on the terms of the individual PFI contract.

#### **6. How to treat VAT where a MOTO agreement doesn't apply.**

Where conditions for a MOTO agreement to apply are not fulfilled, then buildings/accommodation charges between **Crown Bodies** may be Exempt if the criteria for a 'licence to occupy' are fulfilled – such criteria can be found at [HMRC Notice 742 section 2.5](#). If the criteria for a 'licence to occupy' are

not fulfilled, or the licence to occupy has been 'opted to tax' by the supplier, then charges made would attract the Standard Rate.

Note: it is not possible to have legally enforceable rental/lease agreements between Crown Bodies as they are deemed to be the same legal entity as part of the Crown (and formal legal contracts between two parts of the same organisation are not possible).

Where buildings/accommodation charges are being made to **non-Crown bodies**, then charges made would follow normal VAT rules.

Further guidance on land related supplies, can be found at [HMRC Notice 742](#); further guidance on 'opting to tax' can be found at [HMRC Notice 742a](#).

**This is an area that HMRC will review as part of normal compliance activity with customers. Therefore, if you identify any issues when applying this guidance or identify any potential errors, please contact your HMRC Customer Compliance Manager.**

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**If you have any questions on the above, please get in touch with your hub contact.**