VAT on Property Guide
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Revenue Legislation Services

This guide which sets out the current practice at the date of its issue is intended for guidance only and does not purport to be a definitive legal interpretation of the provisions of the Value-Added Tax Act 1972 (as amended).

April 2008
I am happy to introduce Revenue’s VAT On Property Guide, which reflects the new system that was introduced in the Finance Act 2008.

The objective of the new system is to rationalise and simplify the VAT treatment of property transactions. The new system is a fundamental change in the way VAT is applied to property transactions and represents one of the most significant changes in the Irish VAT system since its introduction in 1972.

In 2005 Revenue announced a review of the VAT on Property system and set up a team to bring forward proposals. Following an extensive consultation with relevant stakeholders the report of the Review Group and ‘pro-forma legislation’ on the proposed new system was published. In his 2007 Budget statement, the Tánaiste and Minister for Finance invited a final round of consultation and in the 2008 Budget announced his intention to bring forward the new legislation in the Finance Bill 2008.

I believe the new system is a significant improvement in the application of VAT to property transactions. It represents a major long-term simplification in what had become a very complex part of the law.

The input of external stakeholders to the process of developing the new system was invaluable, was freely given and is very much appreciated. I would like to thank those in Revenue and Department of Finance who contributed to the project and a special word of appreciation goes to the VAT on Property Team – past and present – under the stewardship of John Shine, for their commitment and persistence. They should be justly proud of their work.

Josephine Feehily,
Chairman
April 2008
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Chapter 1

Introduction

The rules for VAT on property transactions can be broadly summarised as follows.

1.1 Sales of property (Chapter 2)

The supply of freehold or freehold equivalent interests in “new” properties in the course of an economic activity is subject to VAT. The five and two year rules determine if a property is “new” –

- The first supply of a completed property within five years of its completion is subject to VAT.
- The second and subsequent supply of a property within five years of its completion is subject to VAT if it takes place within two years of occupation.

Generally, all sales of “old” property (those outside the period when considered “new”) are exempt from VAT. The notable exception is the sale of residential properties by a developer/builder where the two and five-year rules do not apply. In such cases, the sale by the developer/builder is always taxable.

1.2 Joint option for taxation (Chapter 2)

Where the sale of property is exempt from VAT a joint option is provided for whereby the seller and purchaser can opt to tax the sale. Where the option is exercised, the purchaser accounts for the VAT on the sale on a reverse charge basis.

1.3 Letting of property (Chapter 4)

The letting of property is exempt from VAT. The landlord may opt to tax a letting and that option to tax is letting specific. In other words, the landlord has the right to opt (or not to opt) to tax each letting. However, the option to tax does not apply to –

- a letting of residential property, or
- a letting between connected parties.
1.4 Capital Goods Scheme (Chapters 6-8)

The new rules introduce a Capital Goods Scheme (CGS). The CGS provides for the adjustment of VAT deductibility in respect of the acquisition, development or refurbishment costs over the “VAT-life” of a property. The CGS does not have any impact in respect of properties that are used for their entire VAT-life for either fully taxable or fully exempt purposes. The purpose of the CGS is to reflect changes in the use to which the property is put over its VAT-life and to ensure fairness and proportionality in the VAT system. The VAT-life of a property is generally twenty years, but in the case of a refurbishment, the VAT-life of a property in so far as it relates to a refurbishment is ten years. (Chapter 6)

The CGS also has rules to deal with the sale of a property during its VAT-life. It is important to note that if a joint option to tax is not exercised and the person selling the property was entitled to deduct VAT on the acquisition or development costs then there is a claw-back of the residual VAT when an exempt sale occurs. Similarly, if a sale is taxable (either during the “new period” or because of an option to tax) and the seller was not entitled to deduct all of the acquisition and development VAT, a VAT credit is given for the residual VAT. (Chapter 7)

The exercising or terminating of a landlord’s option to tax a letting also has CGS implications. Where the option is exercised on a letting in a property that has previously been subject to an exempt letting, an adjustment is made whereby the landlord is given a VAT credit for the residual VAT. Where an option is terminated a claw-back of the residual VAT occurs. Both of these adjustments arise at the time the option is exercised or terminated. (Chapter 7)

The CGS applies to all new properties (acquired or developed) on or after 1 July 2008 or properties refurbished on or after 1 July 2008. For all such properties, a “capital good record” must be set up and maintained. This record contains all of the information relating to the scheme including how much VAT was deducted on the acquisition or development and details of any adjustments under the scheme, etc. (Chapter 6)

1.5 Transitional rules – freeholds and leaseholds (Chapter 3)

Transitional rules apply to the supply of freehold properties which were taxable under the old rules in Section 4 of the VAT Act 1972 (as amended) and which are supplied on or after 1 July 2008. The rules for such properties mirror the new rules above i.e. the two and five-year rules apply.

The rules also apply to leasehold interests, which were taxable on the capitalised value as a supply of goods under the old rules and which are assigned or surrendered on or after 1 July 2008. Where an assignment or surrender of such a leasehold interest occurs on or after 1 July 2008, it is subject to VAT on the reverse charge basis. The taxable amount is calculated by reference to the number of years remaining in the CGS life of the property.

The CGS rules for dealing with changes in the use of a property during the VAT-life of the property do not apply to freehold or leasehold properties that are subject to the transitional arrangements. This means that no adjustment is required if the taxable use of a transitional property (or a transitional leasehold interest in property) changes from one year to the next. However, where the sale of a transitional freehold occurs or the assignment or surrender of a transitional leasehold interest occurs, the CGS rules as outlined above apply. (Claw-back of VAT if supply exempt, VAT credit if taxable and not entitled to full deductibility.)

1 The exception to this rule is if an exempt letting of a transitional property occurs on or after 1 July 2008 (Section 4C(3)).
1.6 Transitional rules – waiver of exemption (Chapter 5)

There are also rules to deal with transitional properties that were let prior to 1 July 2008 where the landlord has a waiver of exemption in place. The majority of these lettings may continue to be taxed under the old rules on or after 1 July 2008 and the waiver of exemption may also be cancelled under the claw-back rules. There are special cancellation rules that apply in respect of waivers of exemption in the case of lettings between connected parties where the waivers were in place on or before 18 February 2008 and are still in place on 1 July 2008.
2.1 Taxable and Exempt Supplies

This Chapter deals with supplies of properties that are completed on or after 1 July 2008 and the supply of properties that are on hand but not completed on that date. Supplies of properties that are on hand on 1 July 2008 but were completed prior to that date are dealt with in Chapter 3.

2.2 What supplies of property are subject to VAT? (Section 4B)

To come within the charge to VAT 2

- a property must have been developed
  and
- it must be supplied for consideration in the course of business.3

The supply of a completed property is taxable only while the property is considered new (see paragraph 2.10). A property is considered new for a maximum period of five years from the date on which the property itself or a development of the property, other than a minor development, is completed. Where a completed property has been supplied to a person other than a connected person (see Chapter 4 for what is meant by a connected person), the period for which the property is considered new is limited to a period of two years from occupation following completion of the latest development.

Once a property is no longer new, the supply of that property is exempt from VAT. However, the person supplying such a property and the purchaser may jointly opt to have the supply subject to VAT.

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2 The only exception to this rule is where a property is sold and in connection with that sale there is a contract between the purchaser and another person to develop the property. This is covered more fully in paragraph 2.15

3 See paragraph 2.5
2.3 What is meant by developed? (Section 1)

Development in relation to land is defined as:

(a) the construction, demolition, extension, alteration or reconstruction of any building on the land in question, or
(b) the carrying out of any engineering or other operation in, on, over or under the land in question to adapt it for materially altered use.

Development other than minor development, essentially makes a property “new” for VAT purposes. For example, where an undeveloped property or an “old” property is developed the properties are considered “new” for VAT purposes following the completion of that development.

A property is regarded as developed when:

- A new building is constructed or
- An existing building is extended, altered or reconstructed, or
- An existing building is demolished, or
- Some engineering or other operation is carried out or work which adapts the building for materially altered use is carried out (work which is not designed to make a material alteration in the use to which a building is put is not development. Thus, no account is taken of fencing, land drainage, laying of roads for agricultural purposes and so on).

Work on maintenance and repairs does not constitute development. The fact that planning permission had been obtained for development does not, of itself, constitute development for VAT purposes.

Example 1 – Agricultural work

Farmer A owns a 2-acre undeveloped field. In 2009, she spends €50,000 (incl. VAT) on agricultural works adding an access road to get to the field, fencing the entire field and adding a drainage system. She uses the field for agricultural purposes.

In 2010 she sells the field to Farmer B. Although Farmer A has spent substantial money and has carried out engineering works on the land the work did not “materially alter” the land (since it was a farm before and still a farm after). The sale is exempt from VAT as the field is not developed.

2.4 What is minor development in relation to a property?

Minor development is a level of development that does not make a property “new”. It can be described as development that does not (and is not intended to) adapt the property for a materially altered use, provided that the cost of such development does not exceed 25% of the consideration for the supply of the property.
Minor development is important in considering whether the sale of the property is taxable or not. If a sale takes place within five years of the completion of a development, and the development is considered as minor development, then the sale will be exempt from VAT. If the development is not considered minor development, the sale will be taxable, as the property has been made “new” again. Examples 2 and 3 below illustrate how this operates in practice.

Example 2 – Minor development - materially altered use

ABC Ltd owns two identical warehouses – X and Y. In 2009, work is carried out on each of them that is completed at a cost equal to less than 25% of its sale price.

Not materially altered (minor development)
During 2009 ABC carries out work on upgrading X to a standard required for modern warehouses. After the work is complete X is sold. The work has not “materially altered” the use of the building as it is still a warehouse. The sale is exempt from VAT as the work is considered “minor development”.

Materially altered (developed)
During 2009 ABC carries out separate work on Y. This involves the preliminary work required for turning the warehouse into an apartment block. Y is then sold to a property developer. The work has “materially altered” the building – i.e. changed it from a commercial building to a residential building. The sale is taxable as the building is developed and had been made “new”.

Example 3 – Minor development - the 25% rule

Minors development (less than 25% of the consideration & not intended to materially alter use)
Mr A purchased a shop at a cost of €500,000 plus VAT of €67,500 in January 2010. The shop had last been developed in 1995 and needed some renovation. Mr A carried out work on the shop replacing the roof and adding new fixtures. The work was completed on 1 June 2010 and cost €250,000 (excl. of VAT).

On 1 May 2013 he sold the shop for €1,250,000. Mr A must look back and examine the development as the sale takes place within five years of its completion. The work clearly did not materially alter the building, as it was still a shop after its completion. As the cost of the development did not exceed 25% of the consideration, the work done is considered minor development. The sale is exempt from VAT.

Development (Exceeds 25% of sale price)
Same scenario with Mr A above except this time the work carried out was completed on 1 June at a cost of €400,000.

Again, he sells the shop on 1 May 2013 for €1,250,000. The work did not adapt the property for a materially altered use but it did cost more than 25% of the sale price and is not therefore considered as minor development. The property is developed and had been made “new”. The sale is taxable.
2.5 When is a property supplied in the course of business?

The term in the course of business is very wide. Business means any economic activity, whatever the purpose or results of that activity and whether or not the business is subject to VAT. It will generally be obvious whether a supply is made in the course of business. A transaction entered into in a private capacity is not done in the course of business. For instance, a householder who sells her/his private house does not do so in the course of business, even where that person is engaged in business. However, a landlord/investor who sells a property that was used or intended for letting is regarded as making a sale in the course of business.

It should be noted that a person who engages in a single property transaction on a once-off basis may be acting in the course of business. For example, a person who constructs or arranges for the construction of a residence on the site of an existing dwelling for subsequent sale would be regarded as acting in the course of business, even if the site was part of the grounds of that person’s private residence.

2.6 What is meant by a supply of property for VAT purposes? (Section 3)

A supply of goods for VAT purposes is the transfer by agreement of ownership of the goods. In the case of property, a supply includes the transfer in substance of the right to dispose of property, whether as the owner or otherwise. It also includes any transaction where the owner of the property becomes entitled to receive 50% or more of the value of the property at any time prior to the transaction and up to five years after the date of the transaction.

The term ‘in substance’ is taken to mean not only the freehold of a property but also other interests in the property that amount to effective ownership. Such interests are referred to in this guide as ‘freehold equivalent interests’ or just ‘freehold equivalent’. For instance, many apartment owners do not hold the freehold of the property. For property law reasons they generally have a very long interest in the property, for instance a 99 or 999 year lease. Such an interest would be regarded as a freehold equivalent.

A transfer of a freehold is a supply of property, as is the creation of a very long lease (a freehold equivalent), say, for a period of 99 years or more, where the consideration is a premium equal to the value of the property with a nominal rent payable annually.

2.7 When does a supply of property take place for VAT purposes?

As indicated above, a supply of property for VAT purposes involves the transfer of ownership or the transfer in substance of the right to dispose of the property, whether as owner or otherwise. The transfer of the right to dispose of property as owner is usually regarded as taking place when the contract for sale of the property is completed. It is not necessary that the legal title to the property has been transferred to the purchaser. It is sufficient that the purchaser has acquired, in substance, the right to dispose of the property.
In practice, this generally entails the payment of the full consideration due under the contract. In the more straightforward situation of a contract for sale, with a deposit being paid and the balance being paid on completion of the contract, the supply will be regarded as taking place on completion of the contract or on payment of the full consideration, whichever is the earlier. If the supply is taxable, any advance payment, part payment or deposit received by the vendor before the supply is completed is taxable in the hands of the vendor on receipt of the payment.

However, certain transactions other than a straightforward contract for sale are also considered to be supplies of property for VAT purposes. These are transactions under which the vendor becomes entitled to 50% or more of the market value of the property at the time of the contract or agreement, where the amounts are payable either before the contract or agreement is concluded or within five years of their being concluded. As the transactions coming within this category will not be straightforward, the time of supply in such cases will need to be decided on a case-by-case basis.

2.8 When is the supply of a completed property taxable? (Section 4B(2))

A supply of a completed property in the course of business is taxable while the building is new. If development work is carried out to the property, not being minor development work, the property is again regarded as new from the date of completion of that development work.

A completed property is regarded as new for a maximum period of five years from completion. However, once the property has been disposed of to an unconnected person, the period during which the property is regarded as new is restricted to the period covering the first 24 months of occupation of the completed property. It should be noted that if part of a building has been occupied for more than 24 months and part has not, then the consideration for sale is apportioned between the part of the building that is taxable and the part of the building that is exempt.

Example 4 – Taxable supply of completed building: 5/2 year rules

D Ltd constructs a property that is completed on 1 April 2010. D sells the property to E Ltd (an unconnected company) on 23 July 2010. As the sale is made in the course of a business by D and is within the period when the property is considered “new” (first sale within five years of completion) it is taxable.

E occupies the building on 1 September 2010. It subsequently sells the property on 31 May 2011 to F. The property is still considered “new” at this time since the sale is made within five years of completion and the property has not been occupied for a period of 24 months following completion, so the supply is taxable.

F occupies the building on 1 July 2011. They then sell it on 1 November 2012. At this point there has been an aggregate of more than 24 months occupation (9 months by E and 16 months by F—the month of June 2011, between the periods of occupation, is not included) so the property is no longer considered “new”. The sale is exempt.
2.9 What is the position where a property is not completed at the time of supply?

The supply of an uncompleted property that is made in the course of business is always taxable. The two and five-year rules only commence to apply once the property has been completed.

Example 5 – Sale of uncompleted building

D Ltd begins construction of a 10-storey office block in early 2011. The partially completed building is put on the market for sale. In February 2018 another builder buys the uncompleted building. The sale is taxable as the building was never completed so the five-year rule does not apply.

2.10 Are there any further exceptions to the two and five-year rules? (Section 4B(3))

Yes. Where the property is residential property, the supply by the person who developed it in the course of business (i.e. a property developer) or by a person connected with the property developer is always taxable. The two and five-year rules do not apply to supplies of residential property by a property developer/builder.

Example 6 – Sale of residential property by developer

Developer A develops 40 houses to sell. They are all completed in June 2011. She sells most of the houses but lets three of them, which she sells in 2017. The sales of all the houses are taxable since the two and five-year rules do not apply to a developer/builder selling residential property. Because the lettings are exempt she has a CGS adjustment in respect of the three houses for the duration of the letting.

2.11 When is a property completed? (Section 4B(1))

“Completion” in the context of property means that the development of the property has reached the state where the property can effectively be used for the purposes for which it was designed. The physical state that the property is in when completed—the degree of finishing and fitting that will have been carried out—will depend on its intended use and may vary from one type of building to another. Finishing and fitting work that is normally carried out by the person who will use the property, whether as owner or tenant, does not itself have to be completed for the property to have reached the point of being “completed”. One essential requirement for completion in all cases is the connection of all of the utility services that will enable the property be used for the purposes for which it was designed. The five-year rule for taxable supplies of completed property begins from the date of completion.
Example 7 – Completion

D Ltd constructed buildings side-by-side at numbers 7 and 9 Main Street. No. 7 is a small commercial building with planning permission for a shop on the ground floor and an office on the floor above; number 9 is a two-storey building with an apartment on each floor.

The development of both has reached exactly the same point - outsides are painted, doors and windows fitted, the plumbing and wiring are in place and have been connected, but no internal finishing work such as plastering has been carried out.

No. 7 has been completed as it has been finished to the level expected for a commercial unit. No. 9 is not completed because all finishing or fitting work on residential property is not normally carried out by the person who will occupy it.

2.12 Occupation

A property is “occupied” when it is fully in use – use being one for which planning permission for the development of the goods had been granted. It is essential to note that this use is a physical, practical use and not a purely economic or legal occupation. The two-year rule for second and subsequent supplies supplies of a property begins on the date of occupation following completion.

Example 8 – Occupation

D Ltd develops an office block that is completed 15 April 2010. On 1 June D sells the property to E Ltd. E Ltd fits out the property and on 1 September transfers its staff from their previous premises to occupy the first two floors of the building. These two floors are considered occupied from this date.

The third floor is not used. On 15 October E Ltd grants a 4-year-9-month lease to Mr X for the third floor. This is not considered occupation, as occupation requires that the property be occupied by and fully in use by the tenant and not merely used by the landlord in his business of letting property. On 1 February 2011 Mr X moves his staff in and thereafter operates his business from the premises. The third floor is not considered occupied until this date.

2.13 Exempt supplies

Where the supply takes place later than the date provided for under the two and five-year rules, the supply of the property is exempt from VAT. However, where the supply takes place within the VAT-life of the property, there will be CGS implications related to the supply (see Chapter 7).
2.14 Can the supply of ‘exempt properties’ ever be taxable?

Yes. In the case of exempt supplies, the parties to the transaction may opt to make the supply taxable. The option may be exercised only where the person making the supply and the purchaser are taxable persons i.e. both must be engaged in business in the State. The option to tax is a joint option and must be exercised by an agreement in writing between the parties to the transaction.

Where the option to tax has been exercised, the purchaser, and not the seller, will be responsible for accounting to Revenue for the VAT payable, under the reverse charge system. The purchaser should register for VAT, if not already registered.

2.15 Supply in connection with an agreement to develop property (Section 4B(3))

Supplies of property made in connection with an agreement to develop the property are also always taxable, whether or not the person making the supply does so in the course of business. For this provision to apply the purchaser of the property or a person connected with the purchaser must enter into an agreement with a taxable person (usually a developer/builder) to develop the property. The supply of the property and the entering into an agreement to develop the property must be connected in some way. For example, a farmer who sells a site to a private individual who intends to construct a dwelling on the site would not be making a taxable supply under this provision. But where a landowner and developer jointly arrange for the development of a piece of land, on the basis that the landowner will sell plots to various people who will be required to enter into an agreement with the developer to construct a house on the plot, the sale of the plots and the agreement to develop are considered as connected and the sale of the land is subject to VAT.

Example 9 – Taxable supply – building agreement

Mr A owns a field that has not been developed.

B Ltd is a property developer. Ms C signs a contract with Mr A to buy the field and a building agreement with B Ltd for the construction of a house on that site. Ms C’s contract with Mr A is contingent on her performing her contract with B Ltd.

The sale of the site by Mr A to Ms C is taxable as it is in connection with an agreement to carry out a development.

2.16 What is the taxable amount for the supply of property?

Where the supply of property is taxable, the taxable amount is the full amount of the consideration payable for the supply. Consideration can be in cash or it can also consist of the value of services to be performed by the purchaser. Generally, the consideration is the amount payable under the contract. In certain circumstances, the market value of the property may be substituted for the amount shown in the contract.
Chapter 3
Supply of Property — Transitional Measures

This Chapter deals with the supply of completed properties that are on hand on 1 July 2008 (see Chapter 2.11 for a discussion of completion in respect of property). Where a property is on hand at that date but is not completed, the rules described in Chapter 2 (the new rules) apply to any supply of that property on or after 1 July 2008. The properties dealt with in this Chapter can be held either under a freehold or freehold equivalent interest (see Chapter 2) or under a long lease that was treated as a supply of goods under the VAT on property rules applying prior to 1 July 2008. In this Guide these properties will be referred to as transitional properties. Where a property is sold in connection with a contract to develop the property, the sale is subject to VAT in any event (see Chapter 2.15).

**Paragraphs 3.1 to 3.6 deal with properties held under a freehold or freehold equivalent interest at 1 July 2008.**

### 3.1 What is the treatment of transitional properties from 1 July 2008? (Section 4C)

The treatment will depend on whether the holder was entitled to deduct any of the VAT incurred on the acquisition or development of the property.

### 3.2 What is the treatment when the holder was entitled to deduct any of the VAT incurred on the acquisition or development of the property?

Where the holder was entitled to deduct any of the tax incurred on the acquisition or development of the property, the VAT treatment of the supply of the property is the same as the treatment that applies to properties completed on or after 1 July 2008 (see Chapter 2). Where the property is considered new (under the two and five-year rules), the supply of the property is taxable. The taxable amount is the full consideration for the supply.
Where the property is supplied when it is no longer considered “new”, the supply is exempt from VAT. However, the seller and the purchaser may jointly opt to tax the supply if they are both engaged in business. Where the option to tax is exercised the purchaser must account for the VAT on the supply on the reverse charge basis (see Chapter 2.14).

Example 10 – Transitional property – development completed pre 1 July 2008

ABC Ltd had a warehouse constructed in 2006 for €1,000,000 plus VAT €135,000. ABC deducted all of this VAT and carried on its warehouse business from the premises. The warehouse was still on hand on 1 July 2008 and no development had been carried out on it since its acquisition.

On 3 February 2009 ABC sells the warehouse for €1,500,000. As ABC was entitled to deduct the VAT on the acquisition of the property and it is the sale of a developed property within five years of completion, the sale is taxable.

3.3 What is the position where the person making the supply was not entitled to deduct any of the tax incurred on the acquisition or development of the property? (Section 4C(2))

Where the person making the supply was not entitled to deduct any of the tax incurred on the acquisition or development of the property, the supply of the property on or after 1 July 2008 is exempt from VAT. However, the seller and the purchaser may jointly opt to tax the supply, if they are both engaged in business. Where the option to tax is exercised the purchaser must account for the VAT on the supply on the reverse charge basis (see Chapter 2.14).

3.4 What is the position if further development is carried out on the property on or after 1 July 2008?

Where a development is carried out on a transitional property on or after 1 July 2008 the property is not a transitional property and is dealt with under the new rules (see Chapter 2). However, if the development work is considered a “minor development” (see Chapter 2.4) then the property is still treated as a transitional property.

3.5 Does the CGS apply to such a property? (Section 4C(10))

Yes, but only in relation to supplies of such properties. The annual adjustments under the CGS, the adjustments for big swings in the use of the property and the adjustments on exercising and terminating the landlord’s option to tax a letting of the property do not apply. However, where the holder makes an exempt letting of such a property a deductibility adjustment under Section 4(3)(ab) VAT Act 1972 (as amended) is required.

Where a transitional property is supplied within the VAT-life of the property, the CGS adjustments relating to supplies apply to that transaction. If such a property is sold and the sale is exempt from VAT, the claw-back
provisions of the CGS in relation to exempt supplies apply. If such a property is sold and the sale is taxable, the additional input credit provisions of the CGS in relation to taxable supplies apply. (See Chapter 7).

The only exception to this is where the property was acquired after 30 June 2007. In such a case, unless the purchaser has adjusted the input credit in accordance with Section 12(4)(f) VAT Act 1972 (as amended), (apportionment following the end of the accounting period of acquisition for dual-use inputs) the ordinary CGS rules for the adjustment of the deductible amount at the end of the initial interval will apply to the VAT incurred in relation to the property (Section 4C(12)) VAT Act 1972 (as amended).

3.6 What is the CGS adjustment period for transitional properties?

The CGS adjustment period in relation to a freehold or freehold equivalent interest in a completed property on hands at 1 July 2008 is a period of 20 years from the acquisition of the interest. Where the property has been developed since the acquisition of the freehold or freehold equivalent interest, the CGS adjustment period is a period of 20 years from the completion of the most recent development prior to 1 July 2008. For example, where an undeveloped property was acquired in 1999 and developed in 2005, the adjustment period for CGS purposes is 20 years from 2005.

Paragraphs 3.7 to 3.18 deal with long leases (leases of ten years or more) that were created prior to 1 July 2008.

3.7 What are legacy leases? (Section 4C(1))

Legacy leases are interests in property (so called because they are a legacy from the old system of VAT on property) that were treated as a supply of goods under the old rules. The term does not include interests that constitute freehold equivalent interests (see Chapter 2). The lease must have been held by a taxable person on 1 July 2008 – it must, in other words, form part of the assets of a business at that date.

The creation of a legacy lease – and in most cases its subsequent assignment to another tenant – was chargeable to VAT @13.5% as a supply of goods (property). The capitalised value of the rent payable under the lease was added to any other amounts payable, such as a premium, to determine the consideration on which VAT was charged.

3.8 How are such leases dealt with under the new VAT on property provisions? (Section 4C(4))

The surrender or assignment of a legacy lease is regarded as a supply of goods if it occurs within a period of 20 years from the creation of the interest (the lease) or from its most recent assignment or surrender prior to 1 July 2008. This 20 year life represents the CGS life of the legacy lease.

The question of whether a liability to VAT arises on that supply of property (i.e. the surrender of assignment of a legacy lease) depends initially on whether or not the tenant was entitled to deduct any of the VAT incurred on the acquisition of the legacy lease.
3.9 What is the position where a tenant was entitled to deduct any of the tax incurred on the acquisition of the lease? (Section 4C(6))

The assignment or surrender of the lease is taxable if -

• the tenant was entitled to deduct any of the tax charged on the acquisition of that lease or on the development of the property subject to the lease, and
• the surrender or assignment occurs within 20 years of that tenant’s acquisition of that leasehold interest.

When a tenant assigns such a lease, the new tenant to whom the lease is assigned and any further assignees will likewise be taxable on its surrender or assignment during that same 20 year period following that first assignor’s acquisition of the interest. The treatment of a landlord following the surrender of a legacy lease is dealt with in paragraphs 3.14 and 3.17.

3.10 What is the position where the tenant was not entitled to deduct any of the tax incurred on the acquisition of the lease?

Where the tenant was not entitled to deduct any of the tax incurred on the acquisition of the lease, the assignment or surrender of the lease is exempt from VAT. However, the parties to the assignment or surrender can jointly opt to have the assignment or surrender treated as taxable.

3.11 What is the CGS adjustment period for legacy leases? (Section 4C(11))

The adjustment period for legacy leases is -

• in the case of the creation of the legacy lease, the period of 20 years from creation of the lease, or
• in the case where the person holding the interest in the legacy lease on 1 July 2008 acquired it by assignment, the period remaining in the legacy lease at the time of that assignment or 20 years, whichever is the shorter.

The first 12 months of the adjustment period is treated as the initial interval. Each subsequent interval is a period of 12 months. However, if taxpayers wish to do so, they may treat the second interval as the period from the end of the initial interval to the accounting date of the business. Subsequent intervals will then be 12 months from that date.
3.12 Who is responsible for the VAT chargeable on the assignment or surrender of a legacy lease? (Section 4(8))

The person who takes the assignment or surrender is responsible for the VAT chargeable on the assignment or surrender i.e. a reverse charge applies, where that person is a taxable person (i.e. a person who independently carries on any business in the State), a Department of State or a Local Authority. That person must account to Revenue for the VAT in the VAT return for the period in which the assignment or surrender is made.

Example 11 – Taxable assignment of lease

Business X grants Business Y a 35-year lease on 1 July 2000. VAT of €1 million was charged on the capitalised value of the lease, all or part of which VAT was deducted by Business Y. Business Y is still the tenant (and so has the “interest” in the property) on 1 July 2008. The adjustment period for the legacy lease is 20 years from 1 July 2000.

On the 15 April 2012 Business Y assigns the lease to Business J. The assignment is taxable, on the reverse charge basis, as it occurs within the 20-year adjustment period. See Example 12 below for how to calculate the taxable amount.

3.13 What is the tax payable amount where the assignment or surrender of a legacy lease is taxable?

There is a formula to calculate the tax payable. The formula is –

\[ \text{T} \times \frac{N}{Y} \]

T = total tax incurred on the acquisition of the lease or on the most recent development of the property,

N = the number of full intervals, plus one, that remain in the adjustment period at the time of acquisition of the interest by the person making the assignment or surrender, and

Y = the total number of intervals in the adjustment period for the person making the assignment or surrender.

The taxable amount is the tax payable re-grossed @ 13.5%.
**Example 12 – Taxable amount for assignment/surrender of legacy lease**

Take the same amounts and circumstances as Example 11 above. When the assignment is made by Y to J on 15 April 2012 the VAT charged on the assignment is calculated as follows:

\[
\text{Tax payable} = \frac{T \times N}{Y} = \frac{1,000,000 \times 9}{20} = 450,000
\]

The taxable amount is €3,333,334 (by grossing up the tax due\(^4\))

The assignment is reverse charged which means that J is liable to account for VAT of €450,000 on the supply in its Mar/Apr 2012 VAT return.

### 3.14 What obligations does the person making the assignment or surrender have for VAT purposes?

The person making the assignment or surrender must issue a document to the person to whom the lease is assigned or surrendered. The document must contain –

- the amount of tax due on the assignment or surrender (in Example 12 above €450,000), and
- the number of intervals remaining in the adjustment period at the time of the assignment or surrender (in Example 12 above, 9 intervals).

This enables the person to whom the interest is assigned or surrendered to calculate the taxable amount for the transaction and also enables the assignee to calculate any tax payable on any future assignments or surrenders made by him or her.

Where a legacy lease is surrendered and the landlord grants a new lease, that lease is regarded as a new letting to which Chapter 4 applies: the letting will be exempt unless the landlord's option to tax is exercised (the new letting is not a legacy lease). The amount of VAT chargeable on the surrender of the legacy lease will be the basis for the landlord's calculation of CGS liability in the event that the landlord does not exercise the landlord's option to tax the new letting, or on the exempt sale of the property (see Example 13).

### 3.15 What is a reversion?

Where a taxable long lease was created before 1 July 2008, the landlord's interest in the property subject to that lease is regarded as the reversion on that legacy lease. 

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\(^4\) In Example 12 the tax due is €450,000. The "taxable amount" can be calculated by grossing up this amount to 100% as follows - €450,000 / .135 = €3,333,334.
3.16 What is the tax treatment of the sale of a legacy lease reversion?

Where a landlord sells a reversion on a legacy lease on or after 1 July 2008 the sale of the reversion is, in most cases, exempt from VAT. However, if the property was developed by or on behalf of or to the benefit of the landlord subsequent to the creation of the long lease, the supply of the reversion would be taxable if it occurs while the property is considered "new" (see Chapter 2).

3.17 What is the treatment of a legacy lease reversion where the lease is surrendered?

Where the legacy lease that was in place on 1 July 2008 has been surrendered, the special exemption for supplies of reversions no longer applies where the property is sold during the period covered by the surrendered lease. The sale of the property during this period is a sale to which paragraph 3.2 applies. The CGS adjustment is based on the VAT charged on the surrender.

Where the parties opt to tax such a supply, the taxable amount is the consideration for the supply. The normal rules for opting to tax the supply of property apply; in particular, the purchaser will be the person responsible for accounting for the VAT on the supply on the reverse charge basis.

The adjustment period to be used in relation to that transaction is the number of intervals correctly indicated in the document that the tenant gives to the landlord on surrender of the lease.

Example 13 – Surrender of a legacy lease

Assume the transaction mentioned in examples 11 and 12 was a surrender of the lease to the landlord, Mr X and that the landlord deducted the VAT chargeable as he intended to opt to tax the next letting.

In May 2013 Mr X (the landlord) sells the freehold, without having carried out development. The sale is exempt under the normal rules because the property has not been developed within the five years prior to the sale. The CGS adjustment that Mr X would make in the event of an exempt sale would reflect that seven full and one partial intervals remain of the nine intervals applying at the time of the surrender:

\[
\frac{€450,000 \times 8}{9} = €400,000
\]

Mr X would repay €400,000 as an adjustment of deductibility. The same adjustment would be required if, instead of selling the property, Mr X had cancelled his landlord’s option to tax or created a new letting without exercising the option.

---

5 The exemption under Section 4(9) VAT Act 1972 (as amended) no longer applies. The property is one in respect of which the owner was entitled to deduct VAT. Accordingly, the exemption under Section 4C(2) VAT Act 1972 (as amended) does not apply (see paragraph 3.3) and the ordinary rules regarding the taxation of a supply of the property apply (see paragraph 3.2)
3.18 What is the VAT treatment of post-letting expenses in relation to legacy leases?

A landlord who had charged VAT on the creation of a long lease or the successor to that landlord (where the landlord sold the reversion) was allowed, under the rules that applied prior to 1 July 2008, to deduct certain VAT incurred after the date of the taxable supply of the leasehold interest. The VAT in question relates to -

- carrying out services that the landlord is required to provide under the lease the value of which would be reflected in the rent on which the capitalised value was based,
- rent collection,
- any rent review, and
- the exercise of an option to extend the lease or to the exercise of an option to end the lease (break clause) provided for under the lease.

This practice is continued as regards legacy leases. If not already an accountable person, a landlord claiming input credit for such supplies may register on the basis of incurring post-letting expenses.

It should be noted that, while post-letting expenses are restricted to services provided by the landlord, the definition of services in this context is extended, by concession, to cover certain goods of the type specified in Section 3(1B) VAT Act 1972 (as amended) i.e. the supply of electricity, gas, power, heat, refrigeration and ventilation – where, if these goods were services, their supply would qualify for this treatment.

As a concession, it is also accepted that routine general overheads of the landlord may be ascribed to legacy leases, and a portion of the input VAT incurred in respect of them may therefore be deductible. Such overheads would include office expense and audit fees relating to the carrying out of the landlord's business as such – but do not include costs incurred in relation to the purchase or sale of reversions on legacy leases or costs relating to other exempt activities. Where the landlord's business includes both legacy leases and exempt lettings such inputs may be apportioned on a reasonable basis in accordance with Section 12(4) VAT Act 1972 (as amended). The landlord will be entitled to deduct VAT on such overheads in respect of taxable lettings.

The existing practice as regards 'shared services' is being continued for legacy leases. This arises where the landlord agrees under the terms of a lease to arrange for the receipt of the services on behalf of tenants (e.g. cleaning, security, etc.) on the basis of reimbursement by the tenants. The landlord passes on the VAT on such services to the individual tenants who can claim deductibility for the VAT to the extent that the property is used for their taxable activities. The landlord should issue to each tenant, once a year, an invoice showing VAT charged to the tenant on these services. The VAT deductible and payable by the landlord should be incorporated in the appropriate VAT return.
Chapter 4

Letting of Property – New System

4.1 Overview

Letting of property is exempt from VAT but the landlord may, with some exceptions, exercise an option to apply VAT to a letting. No distinction is made between leases for a period of ten years or more and shorter-term lettings, as was the case before 1 July 2008. However, certain very long leases are treated as a supply of the property; these are referred to as freehold equivalent leases and are dealt with in Chapter 2.

Letting in the context of the new VAT on Property rules includes leasing and letting.

4.2 Lettings are exempt from VAT

Lettings are exempt supplies of services for VAT purposes. A landlord who makes an exempt letting is not entitled to deduct VAT incurred on the acquisition or development of a property, which is subject to the letting.

A landlord may opt to tax a letting. However there are restrictions as to the circumstances where a landlord may do so (see paragraphs 4.6 and 4.7 below).

4.3 Option to tax lettings (Section 7A(1))

Where a landlord opts to tax a letting, that service becomes subject to VAT at the standard rate (currently 21%). The landlord is entitled to deduct VAT incurred on the acquisition or development of a property that is to be used for the purposes of making taxable lettings.

The option to tax applies to an individual letting of a property. Under the old waiver of exemption rules, a waiver applied to all short-term lettings (period less than 10 years) of the landlord. That is not the case with the option to tax. Indeed, it may well be that a landlord may opt to tax a letting of part of a building while making an exempt letting of the rest of the building.
4.4 How does a landlord opt to tax a new letting?

A landlord who claims a deduction for input tax incurred on the acquisition or development of a property, which is to be used for letting, is regarded as having opted to tax the lettings of that property.

When the property is let, the landlord must either agree in writing with the tenant that the letting will be taxable or issue a document to the tenant stating that the letting will be taxable. Otherwise, the option to tax that the landlord was considered to have made by claiming input credit will be regarded as terminated and the landlord will be subject to a Capital Goods Scheme adjustment on termination of the option. (See Chapter 7).

Example 14 – Exercising the landlord’s option to tax at development stage and at commencement of the letting

A develops a building in 2012 which is to be let to commercial tenants. He intends to opt to tax the lettings and registers for VAT on the basis that he will make taxable lettings of the property. He claims a repayment in respect of the VAT charged by the builder, architects, etc. A is regarded as having opted to tax the lettings.

When he comes to let the building, A either includes a provision in the letting agreement to the effect that the rents will be taxable or issues a document to the tenant stating that the VAT is chargeable on the rents. A then charges his tenants VAT on the rents and accounts to Revenue for that tax.

Example 15 – Terminating a development-stage landlord’s option to tax

As in Example 14, A intends to exercise the landlord’s option to tax the rents from the property. However, when he comes to let the property he neither concludes a written agreement with his tenant that the rents will be taxable nor issues a document to his tenant to that effect. A must make a CGS adjustment in the VAT period in which the letting is made and repay the tax deducted in relation to the property. (See Chapter 7).

4.5 Can a landlord opt to tax the letting of a property where previous lettings were exempt?

Yes, the landlord can opt to tax such rents by either agreeing in writing with the tenant (either an existing or new tenant) that the rents will be taxable or by issuing a notice in writing to the tenant to this effect. With effect from the date of the agreement/notice, rents from that property will be taxable and the landlord may be entitled to make a CGS adjustment in respect of VAT incurred in the acquisition or development of the property. (See Chapter 7).
Example 16 – Opting to tax a particular letting

B incurred €250,000 VAT on the acquisition of a property in 2010 and has been letting the property for a number of years. She did not claim input credit for this VAT. In November 2014 the existing tenant leaves and in May 2015 B succeeds in getting a new tenant. The new letting agreement includes a provision that the rents will be subject to VAT. B will be required to account for VAT on the rents from the new tenant. She will be entitled to a VAT credit in respect of a CGS adjustment by reference to a proportion of the VAT incurred on the acquisition or development of the property. The input credit in this case will be €250,000 x 16/20 = €200,000. (See Chapter 7).

4.6 Can all landlords opt to tax their rents? (Section 7A(2))

No. There are restrictions on the option to tax rents. The option to tax cannot apply in the following circumstances:

• Where the property is occupied for residential purposes.
• Where the letting is between connected persons. But, if the tenant is entitled to deduct at least 90% of the tax chargeable on the rent, this restriction does not apply.
• Where the property is occupied by a person who is connected with the landlord (even if the letting agreement is between unconnected persons). (See Example 17 below).

4.7 When is a landlord regarded as connected with a tenant or a person who occupies a building owned by the landlord? (Section 7A(3))

The term ‘connected persons’ is defined in the legislation. The full text of the definition is reproduced in Appendix A.

Generally, connectivity can be established as outlined below.

**Individuals are connected with:**
• their spouses,
• their relatives (brothers, sisters, ancestors or lineal descendants) or relatives of their spouses,
• individuals or spouses of individuals with whom they or their spouses are in partnership,
• the settlor or beneficiary of a trust where the individual is a trustee of that trust and vice versa.

**Companies or other bodies of persons are connected with:**
• persons who control that company,
• other companies that act in pursuit of a common purpose with the company, or
• a person or persons with a reasonable commonality of interests who have the power to determine the activities of two companies.

**Note:** This list is indicative only. Reference should be made to Appendix A for the full definition.
4.8 Can a landlord terminate an option to tax rents?

Yes. A landlord can terminate an option to tax rents by either entering an agreement in writing with the tenant that the rents will no longer be taxable or by issuing a notice in writing to the tenant that the rents will no longer be taxable.

An option to tax rents will be terminated automatically

- if the landlord becomes connected with the tenant (see above regarding connected persons),
- if the property becomes occupied by a person connected with the landlord, or
- if the property is used for residential purposes.

4.9 What happens if an option to tax is terminated?

Where the option is terminated during the adjustment period relating to the property (see Chapter 7), a CGS adjustment will be due and the landlord must account to Revenue for the tax due as a result.

Example 17

In Example 14, A’s tenant is an unconnected person but that person sublets the property to C, who is in partnership with A. Since the property is now occupied by a person connected with A, the option to tax is automatically terminated. (See diagram below.) A is obliged to make a CGS adjustment as the option has been terminated during the adjustment period (see Chapter 7).
4.10 On what amount is tax chargeable when a letting is opted?

While the landlord’s option may sometimes be described as “opting to tax the rent” from a particular property, the landlord is in fact opting to make the service of letting the property chargeable to VAT. All of the consideration attributable to that service while the option is in effect therefore becomes subject to VAT. Payments or other consideration received by the landlord prior to effecting the option or after terminating it—for example, a premium or balloon rent payment—are taxable as a result of the option to the extent that they relate to the service of letting supplied while the option is in effect.

A “rent holiday” – a rent-free period that is allowed for bona fide commercial reasons will not require special VAT treatment provided the option is not terminated while the lease granting the rent holiday remains in effect.

The ordinary rules apply in determining when the VAT on the rents becomes due. VAT on the rents should be included in the VAT return for the period in which the rents become due, unless the landlord has been authorised to use the cash receipts basis. Where rents are paid in advance, the VAT becomes due for the VAT period in which the payment is received.

4.11 What is the VAT treatment of premiums under the new VAT on Property rules?

A premium is a sum payable in connection with the granting of a lease, the surrender of a lease or the assignment of a lease.

Where the interest in the property that is being granted or assigned is a freehold equivalent interest (see Chapter 2.6), the premium is treated as part of the consideration for the supply of the property. The VAT treatment of such a premium will follow the general rules for VAT on supplies of property, as outlined in Chapters 2 and 3.

Where the interest in the property is not a freehold equivalent or a legacy lease (see Chapter 3.7), the VAT treatment of the premium is outlined in the following table:

<table>
<thead>
<tr>
<th>Nature of payment</th>
<th>VAT treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premium payable by tenant to landlord as consideration for landlord agreeing to</td>
<td>The VAT treatment of the payment will depend on whether the landlord has opted to tax the letting in question. Where the landlord has opted to tax the letting, the premium is taxable; where the landlord has not opted to tax the letting, the premium is exempt.</td>
</tr>
<tr>
<td>grant the lease</td>
<td></td>
</tr>
<tr>
<td>Nature of payment</td>
<td>VAT treatment</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Premium payable by tenant to landlord as consideration for the landlord agreeing to the surrender of the tenant’s lease</td>
<td>The VAT treatment of the payment depends on whether the landlord has opted to tax the letting in question. Where the landlord has opted to tax the letting, the premium is taxable; where the landlord has not opted to tax the letting, the premium is exempt*.</td>
</tr>
<tr>
<td>Premium payable by a landlord to induce a tenant to enter into a lease; this may be in the form of a payment to assist tenant with cost of fit out</td>
<td>In merely agreeing to take a lease, a tenant is not providing a service to the landlord. If no other service is involved the payment is therefore not made in respect of the provision of a service by the tenant and no VAT arises. However, if by taking the lease the tenant is providing a service, that service is taxable. An example of such a service would be a well-known brand proprietor, which provides an advertising service by agreeing to be a tenant in a new shopping complex. In this case the premium is subject to VAT.</td>
</tr>
<tr>
<td>Premium payable by a tenant (the assignor) to another person (other than the landlord) as consideration for that person agreeing to accept an assignment of the lease. The person to whom the payment is made is usually referred to as the assignee.</td>
<td>In agreeing to take over the tenant’s rights and obligations, the assignee is providing a taxable service to the assignor. The service is subject to VAT at the standard rate (currently 21%)*.</td>
</tr>
<tr>
<td>Premium payable to a tenant (the assignor) as consideration for assigning the lease to another person (the assignee)</td>
<td>In assigning his interest in the lease the assignor supplies a service for consideration that is subject to VAT at the standard rate (currently 21%)*.</td>
</tr>
</tbody>
</table>

* Independently of the tax status of the premium, a CGS adjustment may arise where the assignment or surrender occurs during the adjustment period for refurbishments carried out by the assignor. In certain circumstances, the CGS adjustment may be avoided by the assignee agreeing to be responsible for the CGS in relation to the refurbishments. (See Chapter 7.7 and 7.8)
Chapter 5
Lettings of Property – Transitional Measures

This Chapter looks at the situation of a taxpayer that had waived exemption in respect of short-term letting of property prior to commencement of the new provisions.

5.1 What was the position prior to the introduction of the new system? (Section 7)

Prior to the introduction of the new system for VAT on Property leases were divided into short leases (those for a period of less than 10 years) and long leases (those for a period of 10 years or more).

Long leases were considered a supply of goods and tax was payable by reference to the capitalised value of the lease. The transitional measures as regards these leases are dealt with in Chapter 3.

Short leases were exempt from VAT but a landlord could waive this exemption. Where the exemption was waived, the landlord was entitled to deduct the VAT incurred on the acquisition or development of the let property. The landlord was required to charge VAT on all rents payable to her/him under short leases or lettings. The waiver of exemption applied to all properties let by the landlord under short leases or lettings. Where the landlord sold a property that was within a waiver of exemption and in respect of which the landlord was entitled to deduct VAT incurred on its development or acquisition, the supply of the property was subject to VAT.

A landlord could cancel a waiver of exemption. Where this occurred, the landlord had to make what is known as a cancellation adjustment. The cancellation adjustment is the difference between the VAT deducted by the landlord in respect of the acquisition or development of let properties or in respect of other goods or services consumed in the business of short-term letting and the VAT accounted for by the landlord in respect of rents.
Example 18 – Old rules – waiver of exemption

C acquired a property in November 2002 for €750,000. She was charged VAT of €101,250 (€750,000@13.5%) on the acquisition. She had waived her exemption before acquiring the property and was entitled to deduct this amount in 2002. The property was let with effect from 1 January 2003. By the end of 2007 she has charged VAT of €44,000 on the rent from the property. She had accounted for this in her VAT returns, but as she was entitled to deduct €5,000 of the further VAT she incurred over the years in respect of the letting, she had paid only €39,000 by the end of 2007. If C wished to cancel the waiver of exemption at the end of 2007 she would have to pay €62,250 to Revenue, i.e. the difference between the VAT deducted in respect of lettings and the VAT paid by her on rents.

With effect from 2 April 2007, a waiver of exemption could not be exercised in respect of residential lettings and an existing waiver in place at that date did not extend to a letting of a property for residential purposes where that property was either

- acquired on or after 2 April 2007 unless a binding written contract had been entered into before that date, or
- developed on or after 2 April 2007 unless an application for planning permission to develop the property as a house, apartment or similar establishment had been received by a planning authority before that date.

5.2 What changes occur from 1 July 2008 in the waiver system? (Section 7 and 7B)

- A new waiver of exemption cannot commence on or after 1 July 2008.
- An existing waiver of exemption does not extend to a property acquired or developed on or after 1 July 2008. However, development carried out after that date that completes a development that was underway on 18 February 2008, by or on behalf of the person who exercised a waiver on or before 18 February 2008, does not prevent the extension of that waiver to the property.

Example 19 – Extension of waiver to properties being developed

B has had a waiver of exemption in place for a number of years. He acquired an additional property for letting in 2007. He intended to let the property short-term, and on the basis of his waiver claimed input credit for the VAT incurred on the acquisition of the property. B carried out extensive renovations to the property. These works were on-going on 18 February 2008 and continued until the end of September 2008. The property is let on 31 October 2008. The waiver may be extended to the letting of the property, even though the property was developed on or after 1 July 2008.
Example 20 – Properties developed on or after 18 February 2008

B in Example 19 purchases an additional property in May 2008 that requires further development before it can be let. This development, too, is completed in September 2008. B’s waiver does not extend to this property, as it was not undergoing development on 18 February 2008 by or on behalf of B. This would be the case even if the property were being developed on that date since it would have been undergoing development by or on behalf of someone other than B.

5.3 Are there any further restrictions on existing waivers of exemption? (Section 7B(3))

Yes. A waiver of exemption, in so far as it applies to a letting between connected persons, is cancelled with effect from 1 July 2008 – see Chapter 4 as regards when persons are regarded as connected. In such cases, the landlord will have to pay a cancellation adjustment in respect of the property. The cancellation adjustment will apply to that property only. It will be the difference between the VAT deducted in connection with that property and the VAT accounted for and paid in respect of that property. Where certain conditions are satisfied, the waiver in respect of such a letting will not be cancelled on 1 July 2008.

5.4 What will be the position as regards other properties that the landlord has and that are subject to the waiver of exemption?

The waiver will continue in place as regards these properties. In effect, the landlord will be treated as having had two waivers in place, one in respect of the property that is let to the connected person and one in respect of all the landlord’s other properties.

5.5 What is the position if the connected tenant is entitled to deduct at least 90% of the VAT chargeable on the rent?

Where the tenant is entitled to deduct at least 90% of the VAT charged on the rents, then the waiver will not be cancelled with effect from 1 July 2008, but will continue as long as at least that level of deductibility applies. However, if at any point the tenant’s entitlement to deduct the VAT charged on the rent falls below the 90% figure, then the waiver of exemption immediately ceases to apply to that letting. The landlord will be required to make the cancellation adjustment for the taxable period in which this occurs.
5.6 Are there other exceptions to the cancellation of a waiver where the landlord and tenant are connected?

Yes. Provided the VAT on the rents is at least the permitted minimum amount outlined in paragraph 5.7 the cancellation of a waiver is not required where a waiver was in place on 18 February 2008, where either -

• the letting that is in place on 1 July 2008 was in place since 18 February 2008, or
• the property in question was owned by the landlord and was in the course of development by or on behalf of the landlord on 18 February 2008.

The cancellation is also not required where the waiver relates to a letting of a property held by a landlord under a legacy lease acquired between 18 February 2008 and 30 June 2008 from an unconnected landlord.

Under the existing system a special purpose company ("SPC") was frequently used to spread the payment of the VAT chargeable on the creation of a legacy lease out over a period of time, generally a period of 9 years and 11 months (the maximum length of a lease that was not subject to the capitalised value rules). The ultimate user of the property was usually a company that was not entitled to deduct the full VAT charged on the creation of the legacy lease.

Example 21 – SPC waiver mechanism

In this case, the exempt company established an SPC, which acquired a long lease of the property (lease for a period of 10 years or more). The SPC waived its exemption from VAT on a short lease (less than 10 years) of the property to the exempt company, claimed back the VAT on the capitalised value of the lease and charged VAT @ 21% on the rents.

In all the above cases, the cancellation can be avoided and the waiver continued where the VAT on the rents charged by the landlord is greater than the permitted minimum outlined in paragraph 5.7.
Circumstances in which waiver of exemption for letting to connected person may be retained on or after 1 July 2008 (90% deductible tenants excluded) where the VAT on rents is at least the minimum permitted amount.

<table>
<thead>
<tr>
<th>Nature of landlord’s interest in property</th>
<th>Waiver in place 18 Feb 2008</th>
<th>Property on hand on 18 Feb 2008</th>
<th>Letting in place on 18 Feb 2008</th>
<th>Waiver in place 1 July 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freehold/Freehold Equivalent</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Freehold/Freehold Equivalent under development on behalf of landlord on 18 Feb 2008</td>
<td>✓</td>
<td>✓</td>
<td>❌</td>
<td>✓</td>
</tr>
<tr>
<td>Legacy lease</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Legacy lease acquired from unconnected party 18 Feb 08 to 1 July 2008</td>
<td>❌</td>
<td>❌</td>
<td>❌</td>
<td>✓</td>
</tr>
</tbody>
</table>

✓ = required; ❌ = not required

5.7 What is the permitted minimum rent that must be payable? (Section 7B (4) and (5))

The permitted minimum rent is an amount that will ensure that an amount equivalent to the VAT deducted by the landlord in respect of the acquisition or development of the property will be accounted for within 12 years. It is calculated by the formula:

\[
\frac{A - B}{12 - Y}
\]

\(A\) = the VAT deducted by the landlord in respect of the acquisition or development of the property.

\(B\) = the VAT chargeable and paid on the rents that would be taken into account if the waiver were cancelled at that time.

\(Y\) = is the lesser of 11 or the number of full years since the date of the first letting of the property or the date on which the landlord waived exemption, whichever is later.
Example 22 – Calculation of the minimum payment

Assume that C, in Example 18, is connected with her tenant. The waiver of exemption can continue to operate from 1 July 2008 if the VAT payable in respect of the rent from the property for the following twelve months is equal to the amount calculated in accordance with the formula above.

\[ \frac{A - B}{12 - Y} \]

\[ A = \text{(VAT deducted by C on acquisition of property)} = €101,250 \]

\[ B = \text{(VAT chargeable and paid by C, which would form part of the cancellation amount on 1 July 2008 if the waiver were cancelled at that date)}: €48,000 \text{ [assuming A paid an additional €4,000 in VAT on rent in the first half of 2008, having already paid €44,000 up to the end of 2007]} \]

\[ Y = 5 \text{ (number of full years since the date of the first letting or the date on which A waived exemption).} \]

\[ \frac{A - B}{12 - Y} = \frac{€101,250 - €48,000}{12 - 5} = €7,607 \]

If the current rent is insufficient and C wants to avoid cancelling her waiver (in respect of this property), she will have to increase the rent chargeable to her tenant to ensure that the VAT payable on that rent for the coming twelve months is at least €7,607. Provided that this amount of VAT will be paid, in equal instalments, over the following year and that she keeps her VAT payments in respect of the letting up to date, the property will remain within her waiver of exemption.

The failure, at any point from 1 July 2008 onwards, to meet these conditions will result in the immediate cancellation of the waiver and the requirement to pay the cancellation amount.

5.8 How does the Capital Goods Scheme operate in relation to properties that are subject to a waiver of exemption? (Section 7B(2))

The Capital Goods Scheme does not apply to properties that are within the waiver of exemption to the extent that the tax relating to the acquisition or development of the property is to be taken into account in calculating the cancellation amount payable if the waiver is cancelled. In general, the CGS will not apply to sales of such properties. However, a scenario in which a CGS adjustment could arise is illustrated in the next example.
Example 23 – CGS credit for waiver property

A landlord acquired property A in September 1999. He was charged VAT on acquisition of this property, which he let under an exempt short-term letting. In 2002 he purchased a second investment property B. He decided to waive his exemption, which covered his rents from both properties. He was entitled to reclaim the VAT on the acquisition of property B. In June 2009 he sells both properties and calculates the cancellation amount. The cancellation amount takes account only of the VAT on the acquisition of property B, which does not therefore fall within the CGS. He could, however, claim a CGS adjustment in relation to the VAT incurred on the acquisition of property A if its supply in 2009 is taxable. If he enters into a joint option to tax the sale of property A, then the additional deductibility is:

\[
\text{Non-deductible VAT on acquisition of property A} \times \frac{11^*}{20^{**}}
\]

* (number of full intervals remaining plus one)

**(total number of intervals in adjustment period)
Chapter 6

Capital Goods Scheme – Main Provisions

6.1 What is the Capital Goods Scheme?

The Capital Goods Scheme (CGS) is a mechanism for regulating deductibility over the “VAT-life” of a capital good. For VAT purposes a capital good is a developed property. The scheme operates by ensuring that the deductibility for a property reflects the use to which the property is put over the VAT-life (adjustment period) of the property. The CGS is provided for in Section 12E VAT Act 1972 (as amended). A feature of the scheme is a number of definitions, such as, initial interval, adjustment period, etc. These definitions reflect the various component parts of the scheme.

6.2 How does the scheme operate?

The VAT incurred on the acquisition or development of a property is deductible in accordance with the normal rules relating to deductibility. A person who is engaged in a fully taxable economic activity is entitled to deduct all of the VAT charged on the acquisition or development of a property to be used in the business. A person who is engaged in partly taxable and partly exempt economic activities is only entitled to deduct the percentage of VAT charged that corresponds to the percentage of taxable use.

At the end of the first twelve months following completion (or acquisition, where the property is acquired following completion), the taxpayer must review the amount of VAT deducted on the acquisition or development of the property. If the proportion of taxable use of a property during that twelve-month period differs from the proportion of the VAT deducted on the acquisition or development of that property, then an adjustment is required. If too much has been deducted, the taxpayer must pay back the excess. If too little had been deducted initially, the taxpayer is entitled to claim the deficiency as an input credit.
The first twelve months mentioned above is known as the 'initial interval'.

This adjusted amount deductible for the first twelve months is the benchmark figure for comparison purposes under the scheme for the remainder of the VAT-life of the property. The scheme requires an annual review, over the VAT-life of the property by the owner of the property, of the use to which a property is put (in terms of taxable or exempt use). Where there is a change in the proportion of use for taxable purposes for any year in comparison with the use during the initial 12 months, an adjustment of a proportion of the VAT deductibility will be required.

The annual adjustments will reflect the difference between the use in the initial twelve months and the use in the year being reviewed. Ultimately, the proportion of VAT deducted following all annual adjustments will reflect the actual use of the property over the adjustment period or VAT-life of the property. The VAT-life of a property is made up of twenty intervals. In the case of a refurbishment the VAT-life is ten intervals. Except in relation to the second CGS interval, a CGS interval is twelve months.

It is important to note that for the majority of businesses these CGS reviews will have no effect. For example, if a company deducts all of the VAT charged on acquisition or development and engages in wholly taxable activities during the adjustment period then no adjustments will arise.

Figure 1 outlines how the scheme operates. It assumes that –

• the capital good (developed property) is acquired on or after 1 July 2008 with VAT being chargeable on the acquisition,
• the person acquiring the property is engaged in an economic activity, and
• the accounting year for that person ends on 31 December each year.

The dates when each interval ends are discussed and explained below. Figure 1 can be used as a simple guide to determine whether or not an adjustment is required at the end of any interval during the 'adjustment period'.
Figure 1 – Basics of the scheme

13 Sept 2010
Property Acquired VAT Deducted in accordance with Section 12

12 Sept 2011 (end of Initial Interval)

Is % of taxable use for Initial Interval different from % of VAT deducted?

YES
Adjustment required (Based on full amount) (See Example 27 and 28)

NO
No Adjustment required

31 Dec 2011 (end of 2nd interval)

Is % of taxable use for the interval different to % of taxable use for Initial Interval?

YES
Adjustment required (Based on 1/20) (See Example 29)

NO
No Adjustment required

31 Dec 2012-2029 (end of each subsequent interval)

Is % of taxable use for each interval different to % of taxable use for Initial Interval?

YES
Adjustment required (Based on 1/20) (See Example 29)

NO
No Adjustment required
6.3 When does the scheme apply? (Section 12E(1))

The scheme applies to developed immovable goods (properties) on the acquisition or development of which VAT has been charged to a “taxable person”, i.e. a person that is engaging in an economic activity. In other words, to be subject to the scheme the owner of the property must have been charged VAT on the acquisition or development of the property and must be in business. Any person who acquires or develops a property in these circumstances is known as a “capital goods owner” and will be referred to, for the purpose of this guide, as the owner.

6.4 When does the scheme not apply?

The scheme does not apply to any person who acquires a property on which VAT is not chargeable. It also does not apply to persons who are not engaged in economic (business) activities or to a taxable person who acquires or develops a property in a non-business capacity. In other words, private individuals and bodies who engage in activities that are outside the scope of VAT are not subject to the scheme.

6.5 “VAT-Life” (adjustment period) of a capital good (Section 12E(3))

The scheme provides that in most cases each capital good will have a VAT-life or adjustment period of twenty intervals. It is during this period that adjustments are required to be made. Once the period has elapsed, there are no further obligations under the scheme.

Certain properties have an adjustment period of ten intervals. Where development work is carried out on a previously completed building a new capital good to the value of the cost of the development is “created” by this development work. This is known as a ‘refurbishment’. The adjustment period for a refurbishment is ten intervals. This means that there can, in some cases, be two or more capital goods in relation to a single property at one time.

6.6 Intervals

The adjustment period is divided up into intervals. There are twenty intervals in the case of a new capital good and ten in the case of a refurbishment. An interval, other than the ‘initial interval’ and ‘second interval’, will be the owner’s accounting year.

In the case of an owner who constructs a property, the initial interval begins on the date on which a property is completed. In the case of an owner who purchases a property the initial interval begins on the date the property is purchased. In both cases the initial interval ends twelve months from those dates.

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6 For information on what constitutes ‘completed’ please see Chapter 2
Example 24 – Initial Interval

ABC Ltd purchases a property on which VAT is charged on 13 September 2010. The ‘initial interval’ begins on that date and ends twelve months later on 12 September 2011.

The ‘second interval’ begins on the day after the initial interval ends and ends at the end of the owner’s accounting year in which the initial interval ends. The purpose of this shorter interval is to align the adjustments that may be required under the scheme with the owner’s accounting year.

Example 25 – Second Interval

Using Example 24, ABC’s accounting year ends on 31 December. The ‘initial interval’ ends on 12 September 2011 (in the accounting year that ends 31 December 2011). The ‘second interval’ begins on 13 Sept 2011 (day following end of initial interval) and ends on 31 December 2011 i.e. at the end of the accounting year during which the initial interval ends.

‘Subsequent interval’ means each interval after the second interval until the end of the adjustment period. The interval immediately following the second interval begins on the day after the end of the second interval and ends at the end of the owner’s accounting year.

Example 26 – Subsequent Intervals

Continuing with Example 25 above, where the ‘second interval’ ends on 31 December 2011, the third interval will begin on 1 January 2012 and end on 31 December 2012. Each ‘subsequent interval’ will run from 1 January – 31 December until the end of the twentieth interval on 31 December 2029.

Table 1 below illustrates when each interval will begin and end for a new capital good and for a refurbishment where the capital good is acquired on 13/9/2010 and a refurbishment is carried out on the property during 2023 that is completed on 31/7/2023.

7 This means the property is a “capital good” for the purposes of the scheme
Table 1 – Illustration of dates for adjustment period

<table>
<thead>
<tr>
<th>20 Intervals – new capital good</th>
<th>10 Intervals – refurbishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interval</td>
<td>Begins</td>
</tr>
<tr>
<td>1</td>
<td>13/09/2010</td>
</tr>
<tr>
<td>2</td>
<td>13/09/2011</td>
</tr>
<tr>
<td>3</td>
<td>01/01/2012</td>
</tr>
<tr>
<td>4</td>
<td>01/01/2013</td>
</tr>
<tr>
<td>5</td>
<td>01/01/2014</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
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<td>…</td>
<td>…</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>17</td>
<td>01/01/2026</td>
</tr>
<tr>
<td>18</td>
<td>01/01/2027</td>
</tr>
<tr>
<td>19</td>
<td>01/01/2028</td>
</tr>
<tr>
<td>20</td>
<td>01/01/2029</td>
</tr>
</tbody>
</table>

Note –  Interval 1 = ‘initial interval’,
         Interval 2 = ‘second interval’,
         Intervals 3-20 = ‘subsequent intervals’.

6.7 Obligations at the end of the Initial Interval (Section 12E(4))

As illustrated above in Table 1 the initial interval for a capital good runs for a full twelve-month period. At the end of this period the owner must examine the use to which the property was put during that twelve months. “Use” in this context means the taxable or exempt use of the property. This percentage of taxable use will usually be readily identifiable by the owner as it is based directly on the use of the property. However, in some cases a property may be used as a headquarters of a business that is engaged in various taxable and exempt activities. In these cases, the percentage of taxable use will depend on the overall mix of taxable and exempt activities carried on by the business.

Where the percentage of taxable use during the first year differs from the percentage of the VAT deducted by the owner on the acquisition or development of the property, then an adjustment is required. If the percentage of taxable use for the initial interval is less than the percentage of the VAT deducted on the acquisition or development of the property, VAT is payable by the owner. If the percentage of taxable use for the initial interval is greater than the percentage of the VAT deducted on the acquisition or development of the property, then the owner is entitled to additional deductible VAT. Clearly, if the owner deducts all of the VAT and uses the property for fully taxable purposes, there is no adjustment required. Examples 27 and 28 below illustrate how these rules work in practice.

Note – There is an exception to the normal rules at the end of the initial interval. If a property developer rents out residential properties (exempt – option not allowed), then there is no obligation to carry out the adjustment at the end of the initial interval.
Example 27 – Adjustment at the end of the Initial Interval (tax payable)

ABC Ltd purchases a property on 13 September 2010. The cost of the property is €10,000,000 + VAT €1,350,000. This is the ‘total tax incurred’. ABC deducts all of this VAT on the basis that the company intends to put the property to a fully taxable use.

At the end of the initial interval (12 Sept 2011) ABC calculate that the use to which the property is put during the Initial Interval was 80% taxable. As ABC deducted 100% of the VAT charged it is obliged to make an adjustment (because there is a difference between these two figures) and repay the excess amount deducted.

For the purposes of the adjustment ABC must calculate the ‘total reviewed deductible amount’ which is calculated by multiplying the ‘total tax incurred’ by the ‘initial interval proportion of deductible use’ (80%) –

‘total reviewed deductible amount’ = €1,350,000 x 80% = €1,080,000.

This figure represents the tax deducible in relation to the property on the basis of the taxable use during the initial interval and is the benchmark VAT deductibility figure for the remaining 19 intervals.

The adjustment required at the end of the initial interval is calculated as the difference between the amount of the VAT deducted and the ‘total reviewed deductible amount’ using the formula -

\[ A - B \] (A= amount of total tax deducted, B = ‘total reviewed deductible amount’)

A – B = €1,350,000 – €1,080,000 = €270,000

As A is greater than B, this amount is payable as VAT due for the taxable period immediately after the end of initial interval which will be Nov/Dec 2011. The effect of the calculation is that there is a claw-back of €270,000 from ABC (20% of the VAT initially deducted.)
Example 28 – Adjustment at the end of the initial interval (tax deductible)

XYZ Ltd purchases a property on 7 April 2010. The cost of the property is €1,000,000 + VAT €135,000. This is the ‘total tax incurred’. XYZ deducts 10% (€13,500) of the VAT on the basis that it intends to use the property for 10% taxable activities (90% exempt activities).

At the end of the initial interval (6 April 2011) XYZ calculate that the use to which the property is put during the year was 20% taxable. As it deducted 10% of the VAT charged it is obliged to make an adjustment because there is a difference between these two figures. For the purposes of the adjustment XYZ must calculate the ‘total reviewed deductible amount’ which is simply the ‘total tax incurred’ multiplied by the percentage of taxable use for the initial interval (20%) – €135,000 x 20% = €27,000.

The adjustment is calculated as the difference between the amount of the VAT deducted and the total reviewed deductible amount – A – B

(A= amount of total tax incurred deducted, B = ‘total reviewed deductible amt’)

€13,500 – €27,000

= -€13,500

As B is greater than A, this amount is given as a VAT credit to XYZ for the taxable period immediately after the end of initial interval which will be May/June 2011. The effect of the calculation is that XYZ is entitled to an additional input credit of €13,500 (10% of the VAT charged to them).

6.8 Second and subsequent intervals (Section 12E(5))

At the end of the second and each subsequent interval the owner should examine the use to which the property is put during that interval and compare that use with the use to which the property was put during the initial interval. Where the percentage of taxable use during the interval in question differs from the percentage of taxable use for the initial interval, then an adjustment is required.

If the percentage of taxable use for the interval is less than the percentage of taxable use for the initial interval then an additional amount of VAT is payable by the owner. If the percentage of taxable use for the interval is greater than the percentage of taxable use for the initial interval, then the owner is entitled to an additional VAT deduction. Of course, if the percentage of taxable use for the interval is the same as the percentage of taxable use for the initial interval, no adjustment is required.

The adjustments at the end of the second and each subsequent interval are calculated using certain defined terms.

• The ‘base tax amount’ is calculated by dividing the ‘total tax incurred’ by the number of intervals in the adjustment period.
• The ‘reference deduction amount’ is calculated by dividing the ‘total reviewed deductible amount’ by the number of intervals in the adjustment period. This amount is treated as if it were the amount that was deducted by the owner at the beginning of the second and each subsequent interval.

• The ‘interval deductible amount’ is the amount of the ‘base tax amount’ that is deductible on the basis of the use in the interval in question (i.e. the second or subsequent interval). For example if the “proportion of deductible use” for the second interval is 70%, then the “interval deductible amount” is calculated by multiplying the “base tax amount” by 70%.

Example 29 below illustrates all of these concepts.

Example 29 – Adjustments at the end of second and subsequent intervals

Using the same figures as Example 27 above with company ABC Ltd. and property acquired 13 September 2010. Accounting year ends 31/12.

‘total tax incurred’ = €1,350,000
‘base tax amount’ = €67,500 (€1,350,000 / 20). This is the ‘total tax incurred’ divided by the number of intervals in the adjustment period.

As illustrated in Example 27 the ‘initial interval proportion of deductible use’ was 80%. ‘total reviewed deductible amount’ = €1,080,000
‘reference deduction amount’ = €54,000. (€1,080,000 / 20) This is calculated by dividing ‘total reviewed deductible amount’ by the number of intervals in the adjustment period and is used for any calculations required at the end of the second or subsequent intervals. The reference deduction amount is the same for the second and each subsequent interval.

Where the deductible amount for the second or any subsequent interval (known as the ‘interval deductible amount’) differs from this amount an adjustment will be required.

2nd Interval – no adjustment
For the second interval (which ends on 31/12/2011) ABC’s taxable use was 80%. (This is known as the ‘proportion of deductible use’ for the interval) As this is the same as the use for the initial interval, no adjustment is required.

3rd, 4th & 5th interval – no adjustment
For the 3rd (ending 31/12/2012), 4th (ending 31/12/2013) and 5th (ending 31/12/2014) intervals the ‘proportion of deductible’ use was still 80% so adjustments are not required for those intervals.

6th & 7th interval – change in taxable use – VAT payable on adjustment
For the 6th interval (ending 31/12/2015) the ‘proportion of deductible use’ is 70%. As this differs from 80% (use during initial interval) an adjustment is required. In order to carry out the calculation ABC is obliged to calculate the ‘interval deductible amount’ which is the “proportion of deductible use” for that interval multiplied by the ‘base tax amount’ € 67,500 x 70% = €47,250.
The adjustment is the difference between the 'reference deduction amount' and the 'interval deductible amount' -

\[ C - D \]

\( C = \) reference deduction amount, \( D = \) interval deductible amount

\[ €54,000 - €47,250 = €6,750 \]

As \( C \) is greater than \( D \), €6,750 is payable as tax due for the taxable period following the end of the interval, which is Jan/Feb 2016.

For the 7th interval (ending 31/12/2016) the 'proportion of deductible use' was 70%. Again, an adjustment is required –

\[ C - D \]

\[ €54,000 - €47,250 = €6,750 \]

As \( C \) is greater than \( D \), €6,750 is payable as tax due for the taxable period following the end of the interval, which is Jan/Feb 2017.

8th & 9th interval – no adjustment required

For the 8th (ending 31/12/2017) and 9th intervals (ending 31/12/2018) the 'proportion of deductible use' for the interval was 80%, so no adjustment required.

10th interval – change in taxable use – VAT deductible on adjustment

For the 10th interval (ending 31/12/2019) the 'proportion of deductible use' was 95%. As this differs from 80% (use during initial interval) an adjustment is required. Similar to above, the 'interval deductible amount' is \( €67,500 \times 95\% = €64,125 \)

Adjustment for the interval –

\[ C - D \]

\[ €54,000 - €64,125 = -€10,125 \]

As \( D \) is greater than \( C \), €10,125 is given as a VAT credit for the taxable period following end of the interval, which is Jan/Feb 2020.

For the remainder of the intervals the 'proportion of deductible use' is 80% which means there are no adjustments made at the end of all the intervals. The 20th interval ends on 31/12/2029. After this date there are no further obligations under the scheme.

As can be seen from Example 29, the scheme ensures that the total deductibility allowable in respect of the property reflects the use to which the property is put over the adjustment period. Table 2 below illustrates how the figures from Example 29 lead to adjustments at the end of the initial interval (based on the full amount of VAT incurred) as well as the 6th, 7th, and 10th interval based on 1/20th of the VAT incurred.
Table 2 – Adjustments for intervals

<table>
<thead>
<tr>
<th>Interval</th>
<th>Amt Deducted €</th>
<th>Total Rev Ded Amt €</th>
<th>Adjustment €</th>
<th>VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1,350,000</td>
<td>1,080,000</td>
<td>270,000</td>
<td>Payable</td>
</tr>
</tbody>
</table>

Base tax amount = €67,500 for all intervals

<table>
<thead>
<tr>
<th>Interval</th>
<th>Ref Deduction Amt €</th>
<th>Interval Deduction Amt €</th>
<th>Adjustment €</th>
<th>VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>54,000</td>
<td>54,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>3</td>
<td>54,000</td>
<td>54,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>4</td>
<td>54,000</td>
<td>54,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>5</td>
<td>54,000</td>
<td>54,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>6</td>
<td>54,000</td>
<td>47,250</td>
<td>6,750</td>
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</tr>
<tr>
<td>7</td>
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<td>6,750</td>
<td>Payable</td>
</tr>
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<td>9</td>
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<tr>
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<td>54,000</td>
<td>64,125</td>
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<tr>
<td>11</td>
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</tr>
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<td>20</td>
<td>54,000</td>
<td>54,000</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

6.9 Adjustment where property use is linked to overheads

Where the taxable use of a property is determined by reference to the overheads of the taxpayer (i.e. a HQ building) Revenue will allow the adjustment (either tax payable or deductible) to be made in any of the three taxable periods following the end of any interval. This follows Revenue’s position that allows taxpayers who engage in both taxable and exempt supplies up to three taxable periods to calculate their proportion of taxable use. It should be noted that if a taxpayer attempts to abuse these rules for avoidance / deferral of tax purposes the treatment may be withdrawn for that taxpayer at the discretion of Revenue.

This procedure will not apply in the majority of cases as the taxable use of a property will be determined by direct attribution i.e. the use to which the property itself is put. In the majority of cases the adjustment must be made at the end of the interval and any tax payable or deductible must be accounted for in the VAT return for the taxable period following the end of that interval.
6.10 Big-Swing in taxable use (Section 12E(6))

So far, this Chapter has outlined the rules for the adjustments at the end of an interval where there is a change in the taxable use of a property when compared with the taxable use during the initial interval. Such adjustments are based on 1/20th (1/10th in the case of refurbishment) of the VAT incurred on the capital good.

There are special rules that apply where the taxable use for an interval differs by more than fifty percentage points from the taxable use for the initial interval. These rules recognise the fact that there has been a significant change in the taxable activities of the business and require a full adjustment. This adjustment is not based on 1/20th of the VAT incurred but is based on the full VAT incurred reduced by the number of intervals that have already expired in the adjustment period.

The big-swing rule operates by providing for an adjustment at the end of an interval where there has been a change of more than fifty percentage points when compared to the initial interval. This adjustment is based on the full amount of VAT deducted for the initial interval (as opposed to 1/20 under the normal rules). Where such an adjustment is required there is a “re-balancing” of the benchmark figures and the re-balanced benchmark figures are then used for all remaining intervals after the interval in which the big-swing occurs.

Example 30 – Changes of more than fifty percentage points in taxable use

C Ltd is an IT company. It provides both software services and training services. The breakdown of the business over the last number of years is 30% software (taxable), 70% training (exempt). Its accounting year ends on 31/3 each year. C Ltd purchases a property on 21/8/2011 for €3m + VAT €405,000 (‘total tax incurred’).

‘base tax amount’ = €20,250 (€405,000 / 20)

The initial interval begins on the date of purchase (21/8/2011). C Ltd deducts 30% of the VAT charged.

At the end of the initial interval (20/8/2012) the ‘initial interval proportion of deductible use’ = 30% so no adjustment is required.

‘total reviewed deductible amount’ = €121,500 (€405,000 x 30%)

‘reference deduction amount’ = €6,075 (€121,500 / 20)

For the 2nd (ending 31/3/2013)8, 3rd (ending 31/3/2014), 4th (ending 31/3/2015) intervals the ‘proportion of deductible use’ is 30% so no adjustment is required.

During 2015 C Ltd wins a high value contract to develop software for a large multinational. As a result for the 5th interval (ending 31/3/2016) the ‘proportion of deductible use’ is 90%. As this differs from the ‘initial interval proportion of deductible use’ by more than 50 percentage points (90% less 30%) a big-swing adjustment is triggered9.

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8 The 2nd interval ends on the date of the end of the next accounting year which in this example is 31/3/2013 as the accounting year of C Ltd ends on 31/3 each year.

9 When such an adjustment occurs, there is no “normal” adjustment as described in Chapter 6 based on 1/20 of the deductibility.
The 'interval deductible amount' = €18,225 (base tax amount x 90%)
Adjustment is calculated as follows –
(C – D) x N
(C = reference deduction amount, D = interval deductible amount, N = number of full intervals remaining +1)

(€6,075 – €18,225) x 16 = -€194,400
As D is greater than C, €194,400 is given as an additional VAT credit to C Ltd in the taxable period following the end of the interval (May/June 2016).

As part of the big swing adjustment the benchmark figures for the capital good are also changed.

The 'initial interval proportion of deductible use' is changed to 90%, from 30%. This is necessary, as essentially C Ltd has been given a VAT credit of 90% for 16 intervals.
'total reviewed deductible amount' = €364,500 (€405,000 x 90%)
'reference deduction amount' = €18,225 (€364,500/ 20)

The 'total tax incurred' and the 'base tax amount' stay the same as they are based on the VAT charged at acquisition.

For the 6th interval (ending 31/3/2017) the 'proportion of deductible use' = 90% so no adjustment is required as this is the same as the new 'initial interval proportion of deductible use'.

For the 7th interval (31/3/2018) the 'proportion of deductible use' = 75% so an adjustment is required.
The 'interval deductible amount' = €15,188 (base tax amount x 75%)

C – D
€18,225 – €15,188
= €3,037
As C is greater than D, €3,037 is payable as tax due by C Ltd for the taxable period following the end of interval (May/Jun 2018).

For all the remaining intervals 8th - 20th the 'proportion of taxable use' is 90% so no further adjustments are required.

Example 30 illustrates how adjustments are calculated when there is a change of more than fifty percentage points in the proportion of taxable use of the property when compared with the use during the initial interval. In that particular example, the use increased by more than fifty percentage points so there was a VAT credit given. The rule also applies where there is a decrease in the taxable use by more than fifty percentage points. The decrease results in a claw-back of VAT. The benchmark figures are re-balanced.
6.11 Development by the tenant (Section 12E(8))

Where a tenant has a leasehold interest in a completed property and carries out development work on that property then the tenant “creates” a capital good. The tenant is regarded as the owner of this capital good. This development is a refurbishment and the adjustment period is ten years. All of the obligations in relation to the initial, second and subsequent intervals above arise for the tenant in relation to the development work carried out. Any change in use must be adjusted for over the adjustment period, which is ten intervals.

6.12 Obligations – the “capital good record” (Section 12E(12))

Every owner is obliged to create and maintain a “capital good record” for each property they own. The record must contain the following information about the property –

- The amount of VAT charged in relation to the owner’s acquisition or development of the property. (This is known as the “total tax incurred”. See examples above).
- The amount of the VAT charged that was deducted initially.
- The date on which the adjustment period begins (date of acquisition, where the property was acquired or date completion of development where property constructed or refurbished).
- The number of intervals in the adjustment period. This may be 10 or 20 depending on the situation.
- The Initial Interval proportion of deductible use, i.e. the percentage of taxable use for the first 12 months. (See examples above).
- The total reviewed deductible amount, i.e. total tax incurred multiplied by the percentage of taxable use for the initial interval. (See examples above).
- The proportion of deductible use for each interval, i.e. the percentage of taxable use for each interval (second, third, fourth, etc).
- Details of any adjustments under the scheme. (See examples above).
- Details of any sale of the property.

10 In the case of a property that has been refurbished there may be two or more capital goods attributable to that property. A “capital good record” must be created and maintained for all capital goods that a taxpayer has.
Chapter 7

Capital Goods Scheme: Other adjustments

This Chapter deals with the CGS rules relating to sales, assignments/ surrenders of leases and the landlord’s option to tax.

7.1 Sales of capital goods

There are a number of rules within the scheme for dealing with sales of capital goods (properties) during the adjustment period. The basic rule is that if the sale is taxable (subject to VAT), then for the remaining intervals in the adjustment period, the property is treated as being used for taxable purposes by the taxable person who sells it. If the sale is exempt, then for the remaining intervals in the adjustment period, the property is treated as being used for fully exempt purposes by the seller. The adjustments required are made for the VAT period in which the sale takes place. The rules for whether or not the sale of a property is taxable or exempt are contained in Chapter 2.

7.2 Taxable sale during the adjustment period (Section 12E(7))

If the sale is taxable there are two possible scenarios –

- if the owner was not entitled to deduct some or all of the VAT on the acquisition or development of the property, then a VAT credit is given to the owner at the time of the sale based on the non-deductible VAT and the number of intervals remaining in the adjustment period; or
- if the owner was entitled to deduct all of the VAT on the acquisition or development of the property, then there is no adjustment required.

The owner must also have used the property for 100% taxable activities for the initial interval. This condition obviously does not have to be met if the property is sold before the end of the initial interval.
7.3 Exempt sale during the adjustment period (Section 12E(7))

If the sale is exempt there are two possible scenarios -

- where the owner was entitled to deduct some or all of the VAT, then there is a claw-back based on of the amount of VAT deductible by the owner and the number of intervals remaining in the adjustment period, or
- where the owner was not entitled to deduct any of the VAT, then there is no adjustment required.

Example 31 below illustrates whether or not an adjustment is required when the sale of a property occurs during the adjustment period.

Example 31 – Rules for sales during the adjustment period

When a property is sold there is no further obligations for the owner under the CGS scheme. In all cases the sale brings the adjustment period for a property to an end for the seller.

12 The owner must also have used the property for 100% exempt activities for the initial interval. This condition obviously does not have to be met if the property is sold before the end of the initial interval.
7.4 Obligations for the purchaser

Whether or not the purchaser has any obligations under the scheme is determined by the normal rules as described in Chapter 6. If the purchaser acquires a property (capital good) on which VAT is chargeable and the purchaser is engaged in an economic activity, then the purchaser has acquired a capital good and is subject to the rules of the scheme and must make adjustments as required over a twenty interval adjustment period. The following examples illustrate the various scenarios that can arise on a sale during the adjustment period and outline the obligations for the seller and the purchaser in each case.

7.5 Taxable Sale

The following example outlines the CGS rules when a taxable sale occurs.

**Example 32 – Taxable sale, credit for non-deductible VAT**

BL owns a green field site. It engages a builder to construct a new office. The builder charges €5m + VAT €675,000 (‘total tax incurred’). BL deducts 15% of this VAT on the basis that it intends to use the property for 15% taxable activities. The building is completed on 3/2/2010. The initial interval begins on this date. At the end of the initial interval (2/2/2011) the ‘initial interval proportion of deductible use’ = 15% so no adjustment required.

‘total reviewed deductible amount’ = €101,250

‘non-deductible amount’ = €573,750 (€675,000 – €101,250)

For the 2nd, 3rd, 4th, 5th and 6th interval the “proportion of deductible use” = 15% so no adjustment required at the end of those intervals.

On the 6/5/2016 (during the 7th interval) BL sells the property to JB Ltd. The sale is exempt as it is over 5 years since the completion of the building. However, BL and JB exercise the joint option to tax the sale. The sale price is €7 million. An adjustment is required by BL which gives it a credit for part of the non-deductible VAT –

The adjustment is calculated using the formula:

\[ \frac{E \times N}{T} \]

(E = non-deductible amount, N = number of full intervals remaining + 1, T = Total number intervals in the adjustment period)

\[ \frac{€573,750 \times 14}{20} \]

= €401,625

BL claims €401,625 VAT credit for the taxable period in which the sale occurs (May/June 2016). BL has no further obligations under the scheme. As the sale is subject to the joint option to tax, it is reverse charged and JB must account for VAT on the sale - €7m x 13.5% = €945,000.

Obligations for JB

JB has acquired a developed property on which VAT is chargeable. JB is an owner for the purpose of the scheme. The initial interval for JB begins on 6/5/2016. There will be 20 intervals and the ‘total tax incurred’ = €945,000.

\[ ^{13} \text{See Chapter 2} \]
It should be noted that Example 32 deals with a situation where the sale is exempt but a joint option to tax is exercised. The VAT credit given to BL also applies to situations where the sale takes place while the property is “new”\textsuperscript{14} (for example if the property was sold by BL within 5 years of its completion\textsuperscript{15}). Example 32 illustrates how the credit given to BL ensures that when VAT is charged on the sale that any non-deductible VAT for the remainder of the VAT-life (twenty years reduced by the number of intervals that have expired) is given as a VAT credit. Obviously, if the seller had been entitled to deduct the full VAT charged (the total reviewed deductible amount was the full VAT charged) no further input credit arises.

### 7.6 Exempt Sale

The following example outlines the CGS rules when an exempt sale occurs.

**Example 33 – Claw-back of VAT on exempt sale**

M Ltd purchases a new property\textsuperscript{16} from B Ltd on 6/10/2012 for €3m + VAT €405,000. (‘total tax incurred’). The initial interval for the property begins on that day. M deducts all of the VAT on the basis it intends to use the property for a fully taxable activity. M ‘occupies’ the property on 25/10/2012\textsuperscript{17}. At end of the initial interval (5/10/2013)– 

\textit{‘initial interval proportion of deductible use’} = 100%

\textit{‘total reviewed deductible amount’} = €405,000

The property is used for 100% taxable purposes until sold on 4/5/2015 to RS Ltd. As it is the second or subsequent sale following completion and the property has been occupied for a period of more than 2 years\textsuperscript{18} the sale is exempt. The exempt sale triggers an adjustment. The formula is:

\[ B \times \frac{N}{T} \]

\[ (B = \text{total reviewed deductible amount}, N \text{ and } M \text{ – see Example 32 above}) \]

\[ \frac{€405,000 \times 17}{20} \]

\[ = €344,250 \]

€344,250 is payable as tax due by M in the taxable period in which the sale occurs (May/June 2015). There are no further obligations under the scheme for M.

**Obligations for RS Ltd**

RS acquires a developed property but no VAT is chargeable on the acquisition. Therefore, the property is not subject to the CGS in the hands of RS.

\textsuperscript{14} See Chapter 2

\textsuperscript{15} Note – In cases where the sale is taxable while “new,” the tax payable on the sale is not “reverse charged” as described in Example 32. BL will charge VAT to JB in the normal way. BL will remit the VAT to Revenue and JB will deduct whatever proportion of the VAT to which it is entitled.

\textsuperscript{16} The property was completed on 1/9/2012 and never occupied by B Ltd.

\textsuperscript{17} See Chapter 2.

\textsuperscript{18} Occupied 25/10/2012, sold 4/5/2015, more than 24 months occupation – sale is exempt. See Chapter 2.
7.7 Development by a tenant (Section 12E(8))

As discussed in Chapter 6.11, where a tenant has a leasehold interest in a property and carries out development work in that property, then the tenant “creates” a capital good. Where such a development occurs the adjustment period is ten years as, for the purposes of the scheme, the development is considered a “refurbishment” (development work on a previously completed building). There are certain other obligations in such circumstances aside from the change of use provisions. Where a tenant assigns or surrenders the lease there are special rules as described below.

7.8 Assignment or surrender of lease where development carried out by tenant

If, during the ten-interval adjustment period, a tenant assigns or surrenders a lease of a property in which they have “created” a capital good, an adjustment arises. Essentially a claw-back of the VAT deducted (reduced by the number of years that have elapsed in the adjustment period) arises in the hands of the tenant.

Example 34 – Development by tenant, subsequent assignment

PH Ltd takes a lease in a property from 1 June 2010. PH carries out development work on the property installing air-conditioning units, a lift and other fixtures to prepare the unit for trading. The total cost of this work is €500,000 + VAT €60,750. PH deducts 90% of this VAT on the basis that the property is to be used to the extent of 90% for taxable activities.

'total tax incurred' = €67,500
'base tax amount' = €6,750 (€67,500 / 10)

The development work is completed on 23 July 2010. The initial interval for the capital good begins on that day. At the end of the initial interval (22/7/2011) PH’s exempt activity is greater than forecast; the ‘initial proportion of deductible use’ is 65%. As this differs from 90% an adjustment is required.

The 'total reviewed deductible amount' = €43,875 (€67,500 x 65%)
'reference deduction amount' = €4,388 (€43,875 / 10)

Adjustment calculated as follows –
A – B
€60,750 – €43,875 = €16,875

As A is greater than B €16,875 is payable as tax due in the taxable period following the end of initial interval (Sept/Oct 2011). For the 2nd (31/12/2011), 3rd (31/12/2012) and 4th (31/12/2013) intervals ‘proportion of deductible use’ = 65% so no adjustments are required.

During 2014 (fifth interval) PH decide to upscale and move to a new property. It surrenders the lease to the landlord on 1 April 2014. This triggers an adjustment under the scheme calculated as follows –

\[ \frac{B \times N}{T} \]

(See Example 33 for B, N and T)

\[ \frac{€43,875 \times 6}{10} \]

= €26,325 payable as tax due in taxable period when surrender occurs (Mar/Apr 2014).
7.9 Passing on scheme liabilities in certain circumstances (Section 12E(8))

There are two exceptions to the rule described above, whereby there is a claw-back of VAT deducted, where the tenant assigns or surrenders a lease on a property in which the tenant has carried out a development.

The first exception is where the tenant used the property for 100% taxable use during the initial interval. In such cases where the lease is assigned or surrendered and where the tenant enters into a written agreement with the person to whom the lease is being assigned or surrendered, then the tenant’s obligations under the CGS can be “passed on” to that person. The tenant is obliged to issue a copy of the ‘capital good record’ to the other party and that person uses the information in the record for the purposes of operating the scheme.

Example 35 – Assignment/surrender – passing on obligations

GR Ltd takes a lease in a property from 1 April 2010. The property is a shell and GR Ltd intends to open a restaurant. GR Ltd carries out development work on the property installing a bar, kitchen and air-conditioning units, etc. The total cost of this work is €1,500,000 + VAT €202,500. GR Ltd deducts all this VAT on the basis it intends to make fully taxable supplies. The development work is completed on 6 Aug 2010.

‘total tax incurred’ = €202,500

At the end of initial interval ‘initial interval proportion of deductible use’ = 100%.
Therefore, no adjustment required.

‘total reviewed deductible amount’ = €202,500 (€202,500 x 100%)

During the 3rd interval GR Ltd ceases trading. GR’s landlord is willing to accept the surrender of the lease from 1 Sept 2012. The landlord is willing to leave the tenant’s fixtures in place as another tenant might wish to run a restaurant from the premises. The landlord agrees in writing with GR to “take over” the responsibilities under the CGS scheme from the date of the assignment. GR issues a copy of the capital good record and the landlord will have to make adjustments at the end of each of the remaining intervals for any changes of use, etc, until the end of the adjustment period (31/12/2019).

The second exception to the claw-back from the tenant is where there is an assignment or surrender of a lease where the development work is essentially “ripped out”. For example, if a kitchen and bar has been installed and the kitchen and bar are taken out of the property prior to the assignment or surrender of the lease, then there is no claw-back from the tenant under the scheme.
Chapter 4 outlines the rules regarding the VAT treatment of the letting of property. The basic rule is that the letting of a property is exempt from VAT. However, a landlord may opt to tax the letting. The effect of so opting is that the property is then put to a fully taxable use and the landlord is entitled to deduct the acquisition and development VAT costs.

As the option can be exercised or cancelled at anytime, there are clear implications for the Capital Goods Scheme as a property can move from taxable to exempt use (or vice-versa). The basic rule is that if a landlord terminates an option to tax a letting or exercises an option to tax a previously exempt letting, the landlord is deemed for the purposes of the CGS to have supplied the property and immediately re-acquired it. Where the landlord terminates the option to tax, the ‘supply’ is deemed to be exempt, which gives rise to a withdrawal of deductibility already allowed. Where the landlord exercises an option to tax a letting where the letting was previously exempt, the ‘supply’ is deemed to be taxable, thus giving input credit for previously non-deductible VAT. Examples 36 and 37 illustrate how this operates in practice. The adjustment period for the capital good commences at the deemed acquisition date and comprises the number of full intervals remaining in the original adjustment period plus one.

**Example 36 – Terminating the landlord’s option to tax**

L acquired a property on 12/7/2010. His accounting year ends on 31/12 each year. The property cost €15m + VAT €2,025,000. *(total tax incurred)* L deducted all of the VAT on the basis that he intends to rent the property and exercise the landlord’s option to tax and charge VAT on the rents. L enters into a 21-year lease with an un-connected tenant beginning on 1/9/2010 and charges VAT on the rents. *(total reviewed deductible amount)* = €2,025,000

The initial interval begins on 12/7/2010. After ten years the tenant exercises the break clause in the lease. L secures a new tenant. The new tenant K has no entitlement to deduct VAT and therefore does not want to be charged VAT on the rents.

L creates a new 15-year lease to K beginning on 1/10/2020. He does not charge VAT on the rents and so “terminates” the landlord’s option to tax. This is deemed to be an exempt sale of the property by L. This triggers an adjustment on 1/10/2020. The formula is the same above in Example 33 (exempt sale)–

\[
\frac{B \times N}{T} = \frac{€2,025,000 \times 10}{20} = €1,012,500
\]

€1,012,500 is payable by L for the taxable period during which the option to tax is terminated (Sept/Oct 2020).

L is deemed to immediately reacquire the property and the property is deemed to be a capital good for the purposes of the scheme. *(total tax incurred)* is deemed to be €1,012,500 *(non-deductible amount)* = €1,012,500
Example 37 – Exercising the landlord’s option to tax with previously exempt letting

OCS purchases a property on 17/2/2010 for €6m + VAT €810,000. (‘total tax incurred’) It did not deduct any of the VAT on the basis that it intended to make an exempt letting of the property. OCS’s accounting year ends on 31/12. OCS secures a tenant and creates a 25 year lease which begins on 1/4/2010.

‘non-deductible amount’ = €810,000
‘total reviewed deductible amount’ = Nil

The letting continues for 8 years until the tenant exercises a break clause and exits from the lease. OCS secure a new tenant who is fully taxable and so is indifferent as to whether VAT is charged or not as it will be fully deductible.

On 1/5/2018 OCS creates a new lease for 20 years to T Ltd and exercises the “landlord’s option to tax”. This is deemed to be a taxable sale of the property by OCS. This triggers an adjustment under the scheme. The formula is the same as above in Example 32 (taxable sale) –

\[
\frac{E \times N}{T} = \frac{\text{€810,000} \times 12}{20} = \text{€486,000}
\]

which is given as VAT credit for the taxable period when the option is exercised (May/June 2018).

OCS are deemed to immediately re-acquire the property on 1/5/2018. It is a capital good as it was acquired for a business purpose and VAT was deemed to have been charged. For the purposes of the scheme –

‘total tax incurred’ is deemed to be €486,000
OCS is deemed to have fully deducted this amount.
‘total reviewed deductible amount’ = €486,000

The adjustment period will have 12 intervals beginning with the initial interval that commences on 1/5/2018 and ends on 30/4/2019. (The second interval begins on 1/5/2019 and ends on 31/12/2019).

There is no variation in the lease and the adjustment period ends (with no further adjustments during the remaining 12 intervals) on 31/12/2029.
7.11 Property Developer/ Builder lets residential property prior to supply

Paragraph 2.10 sets out an exception to the two and five-year rules whereby the supply of a residential property by the property developer/builder who developed the property, is always treated as taxable regardless of when it takes place. Where the property developer/builder lets the property this letting is exempt, as an option to tax residential property is not allowed. Under the normal CGS rules the exempt letting of a property leads to a full adjustment of the tax deducted as set out in paragraph 7.10 above. However, in the case of the property developer/builder the adjustment set out in paragraph 7.10 does not apply and the CGS adjustment is treated under the ‘normal’ CGS rules for change of use and the adjustment is as set out in Chapter 6. (See note on page 45).
8.1 Background

Where a transfer of ownership of goods takes place in the course of the transfer of a business or part of a business that transfer is deemed not to be a supply for VAT purposes. This means that no VAT is chargeable on such a transfer.

8.2 CGS and transfer of a business

As no VAT is chargeable on the transfer of a property in the course of a transfer of a business, there are special rules within the CGS to deal with such transactions. There are basically two main rules dealing with the transferee to enable him or her to operate the scheme. One applies where the transfer occurs during the period when the sale of the property would have been taxable but for the transfer of business relief (i.e. while the property was considered “new”). The second rule applies when the transfer of the property occurs outside this period i.e. when if it were supplied other than as part of a transfer of a business, the sale would have been exempt. There are also rules dealing with the transferor.

8.3 Transfer of property during the period when property considered “new” (Section 12E(3) and (7))

Where a transfer of a property occurs in the course of a transfer of a business no VAT is charged on the sale of the property to the transferee. If this occurs during the period when a property is considered “new” (i.e. if the property was supplied at the time the transfer takes place it would be inherently taxable) then for CGS purposes:

19 See Chapter 2
• the transferor is treated as having made a taxed supply of the property;
and
• the transferee is deemed to have been charged the VAT that would have been charged but for the
fact that relief for the transfer of business applied. The amount of tax that would have been charged
is treated as the ‘total tax incurred’. The transferee must pay to Revenue the difference between this
amount and the amount that would have been deductible if this amount of VAT had been charged
on the supply of the property.

Example 38 below illustrates how this operates in practice.

Example 38 – Transfer of business while property is “new”– taxable transferor/transferee

B Ltd constructs a property that is completed on 6 Oct 2009 for a cost of €1,000,000 + VAT
€135,000 (‘total tax incurred’). It deducts all of the VAT on the basis it intends to run a fully
taxable bookshop business. B Ltd operates a fully taxable business for three years so there
are no adjustments required under the CGS scheme. During their 3rd year of occupation of
the property, C Ltd makes B Ltd an offer to buy their business for €2,000,000. Of this,
the property is valued at €1,500,000, the stock at €100,000 and the goodwill of €400,000. As this
is a transfer of a business no VAT applies. The business is sold to C Ltd on 14/11/2012.

CGS Implications for B Ltd (transferor) –
B Ltd is treated as having made a taxable supply of the property. There are no CGS implica-
tions on the transfer as B Ltd has already deducted all of the VAT and used the property for
fully taxable purposes. The CGS rules for properties acquired through the transfer of busi-
ness rules mirror those for taxable supplies from the perspective of the transferor.

CGS Implications for C Ltd (transferee) –
C Ltd is treated as having incurred VAT on the acquisition of the property. As C Ltd is using
the property for fully taxable purposes there is no difference between the amount of VAT
deemed to have been charged and the amount of that VAT that would have been
deductible.
Using the formula to calculate the amount payable:
\[ F - G \]
\[ F = \text{amount of VAT that would have been chargeable if the transfer of business relief had not applied,} \]
\[ G = \text{amount of that VAT that would have been deductible} \]
\[ €202,500 - €202,500 = €0 \text{ (i.e. amount payable by C Ltd is nil)} \]

A new CGS adjustment period begins for C Ltd
‘total tax incurred’ = €202,500 (Amount that would have been chargeable
€1,500,000 x 13.5%)
C Ltd is deemed to have fully deducted this amount.
‘base tax amount’ = €10,125 (€202,500 / 20)
The initial interval begins on 14/11/2012 and ends on 13/11/2013.
At the end of the initial interval the ‘initial interval proportion of deductible use’ =100% so
no adjustment required.
‘total reviewed deductible amount’ = €202,500
‘reference deduction amount’ = €10,125

C Ltd must then operate the CGS scheme for the property for the remaining 19 intervals in the normal way and account for any change of use or any possible adjustments required when the property is sold, etc.

Example 39 – Transfer while property “new” – exempt transferor/transferee

Training Ltd (TL) purchases a new property on 7 Nov 2010 for €4m + VAT €540,000 (‘total tax incurred’). TL are engaged in the fully exempt activity of vocational training and do not deduct any of the VAT. At the end of the initial interval (6/11/2011) there is no adjustment as the ‘initial interval proportion of deductible use’ is 0%.

‘total reviewed deductible amount’ = 0
‘non-deductible amount’ = €540,000 (€540,000 – 0)

During 2011 an international consortium (IC) make an offer to buy the business for €6m. The valuation of the property as part of the offer is €4.5m. TL agrees to sell the business to IC on 1/12/2011. As there is a transfer of a business as a going concern, no VAT applies.

CGS implications for TL (transferor) –
The transfer however triggers a CGS adjustment for TL. The adjustment mirrors the credit that would be given if the property were subject to a taxable supply –

\[
\frac{E \times N}{T}
\]

(E = non-deductible amount, N = number of full intervals remaining +1, T = total number of intervals in adjustment period)

\[
\frac{€540,000 \times 19}{20} = €513,000
\]

This is given as a VAT credit to TL for the taxable period when the transfer occurs (Nov/Dec 2011).

CGS obligations for IC (transferee) –
IC is treated as having been charged VAT that would have been charged on the supply of the property if the transfer of business relief had not applied.

‘total tax incurred’ = €607,500 (Amount that would have been chargeable if the transfer of business relief had not applied €4,500,000 x 13.5%).
As IC would not have been entitled to deduct all of the VAT that would have been chargeable, there is an adjustment triggered in the taxable period when the transfer occurs (Nov/Dec 2011) –
\[
F \rightarrow G
\]
(F= amount of VAT that would have been chargeable had property been supplied, G= amount of that VAT that would have been deductible)
€607,500 – 0
€607,500 payable as tax due by IC.
IC is deemed to have deducted none of the “total tax incurred”

The initial interval begins on 1/12/2011 and ends on 30/11/2012. “initial interval proportion of deductible use” = 0%.
“total reviewed deductible amount” = 0
“non-deductible amount” = €607,500.

IC must operate the scheme for the remaining 19 intervals in the normal way and will be entitled to a VAT input credit at the end of any interval during which the property is used for taxable/partly taxable purposes. It will also be entitled to a credit if the property is sold during the adjustment period and the sale is taxable.

It should be noted that the obligations on the exempt transferor and exempt transferee as illustrated in Example 39 applies only to transfers that occur during the period while the property is “new”.

8.4 Transfer of property during the period when property outside “new” period (Section 12E(10))

If a transfer occurs outside the period where a property is considered “new” (i.e. if the property was sold at the time the transfer takes place it would be exempt from VAT) then the transferee essentially “steps into the shoes” of the transferor. The transferee takes over from the transferor and “inherits” the adjustment period of the property, i.e. if six intervals have elapsed then there will be fourteen intervals remaining in the adjustment period for the transferee. Example 40 below illustrates how this operates in practice.

Example 40 – Transfer outside period where property is “new”

Mr S is a sole trader who runs a fully taxable business. He purchased his current office space for his business on 13/4/2010 for €3m + VAT €405,000. He has no adjustment at the end of the initial interval as his ‘initial proportion of deductible use’ = 100%.
‘total reviewed deductible amount’ = €405,000

Mr S continues to trade for 6 years engaging in fully taxable activities. (No adjustment at end of any intervals to that point). During 2016 (7th interval) Mr S begins to plan his retirement. A big firm (BF) becomes aware of this and makes Mr S an offer for the business of €5m. The property is valued at €4m. Mr S accepts the offer and sells the business on 1/7/2016. As there is a transfer of a business as a going concern, no VAT applies. If the transfer of business relief had not applied, the supply of the property would have been exempt from VAT. Because of this the treatment of the transfer for the purposes of the CGS is different to that as outlined in Examples 38 and 39.
Essentially BF becomes the successor to Mr S and “steps into the shoes” of Mr S for the purposes of the CGS scheme. Mr S is obliged to provide a copy of the “capital good record” to BF and BF continues to operate the CGS as if it had owned the property from the date it was acquired by Mr S (13/4/2010).

BF must comply with the scheme for the remaining 14 intervals in the normal way and account for any change of use or any possible adjustments required when the property is sold, etc.

8.5 Interaction with Section 13A VAT Act 1972 (as amended)

Section 13A VAT Act 1972 (as amended) provides for the zero-rating of most supplies to exporters who qualify for authorisation under that provision. These supplies would include the sale of property to the exporter and construction services and other services and goods used by an exporter for the purpose of developing property. Where, as a result of Section 13A, an exporter has had costs relating to the acquisition or redevelopment of a property zero rated – including refurbishment by the exporter as a tenant – then, for the purposes of the CGS, those inputs are treated as if Section 13A had not applied to them and as if the VAT had been charged at the rates appropriate to the goods or services concerned and fully deducted by the exporter. The exporter therefore has the same responsibility within the CGS in respect of capital goods acquired or developed and zero rated under a Section 13A authorisation as he would if the authorisation had not applied.
APPENDIX A

Section 7A(3) of the VAT Act, 1972 (as amended), which outlines the circumstances under which a person shall be determined to be connected with another person, is reproduced below:

“(3) (a) For the purposes of this section any question of whether a person is connected with another person shall be determined in accordance with the following:

(i) a person is connected with an individual if that person is the individual’s spouse, or is a relative, or the spouse of a relative, of the individual or of the individual’s spouse,

(ii) a person is connected with any person with whom he or she is in partnership, and with the spouse or a relative of any individual with whom he or she is in partnership,

(iii) subject to clauses (IV) and (V) of subparagraph (v), a person is connected with another person if he or she has control over that other person, or if the other person has control over the first-mentioned person, or if both persons are controlled by another person or persons,

(iv) a body of persons is connected with another person if that person, or persons connected with him or her, have control of that body of persons, or the person and persons connected with him or her together have control of it,

(v) a body of persons is connected with another body of persons –

(I) if the same person has control of both or a person has control of one and persons connected with that person or that person and persons connected with that person have control of the other,

(II) if a group of 2 or more persons has control of each body of persons and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he or she is connected,

(III) if both bodies of persons act in pursuit of a common purpose,

(IV) if any person or any group of persons or groups of persons having a reasonable commonality of identity have or had the means or power, either directly or indirectly, to determine the activities carried on or to be carried on by both bodies of persons, or

(V) if both bodies of persons are under the control of any person or group of persons or groups of persons having a reasonable commonality of identity,

(vi) a person in the capacity as trustee of a settlement is connected with –

(I) any person who in relation to the settlement is a settlor, or

(II) any person who is a beneficiary under the settlement.

(b) In this subsection –

‘control’, in the case of a body corporate or in the case of a partnership, has the meaning assigned to it by section 8(3B);

‘relative’ means a brother, sister, ancestor or lineal descendant.”