FINANCE ACT 2013

VALUE-ADDED TAX

NOTES FOR GUIDANCE

Issued by VAT Policy and Legislation Branch, 18 April 2013

67. Interpretation (Part 3)

This section defines the Principal Act as the Value-Added Tax Consolidation Act, 2010 for the purposes of Part 3 of the Act. This is a conventional provision in Finance Acts. It allows abbreviated terms to be used for references to previous legislation and thus facilitates drafting and subsequent reading of the legislation. For example, the term "Principal Act" used in Part 3 of this Act refers to the Value-Added Tax Consolidation Act 2010.

68. Receivers and liquidators

Summary

This section amends sections 28, 65, 76 and 95 of the VAT Consolidation Act in relation to receivers and liquidators.

For the avoidance of doubt, the amendments make specific provisions to clarify the existing position whereby a receiver, liquidator or other person exercising a power, who, in the course of carrying on or winding up a business, supplies taxable services (e.g. operates a hotel or makes a taxable letting), is liable for the VAT on those services/rents. The amendments provide that the accountable person is deemed to have made the supplies but the receiver/liquidator is required to register, make the return, and remit any tax due in relation to those supplies.

The amendments also oblige the receiver/liquidator to make the return and remit any tax due in relation to:

(a) any deductibility adjustment necessary under the capital goods scheme and

(b) any deductibility adjustment necessary as a result of an exempt letting of a transitional property

Details

<u>Section 28</u>
Section 28 deals with special rules in relation to supplies of services. *Paragraph (a)* inserts two new subsections (4) and (5) into section 28.

Subsection (4) mirrors the legislation dealing with disposals of goods by receivers/liquidators contained in section 22(3) of the VAT Consolation Act. It provides that where a receiver/liquidator supplies a service/letting in the course of carrying on the business of an accountable person, or in the course of winding up a company, then the accountable person is deemed to have supplied the service/letting.

Subsection (5) deals with a situation where a receiver takes control of a property and the receiver opts to tax a new letting of that property. Where the owner of the property was not an accountable person (i.e. had been engaged in exempt letting) the supply is deemed to be made by, and the option to tax deemed to have been exercised by, the owner.

<u>Section 65</u>
Section 65 deals with registration requirements. *Paragraphs (b) and (c)* amend subsections (1) and (4) to extend the existing registration obligations on receivers/liquidators in relation to disposals of goods to also cover supplies of services.

<u>Section 76</u>
Section 76 deals with returns and remittances. *Paragraphs (d) to (h)* amend subsections (2) and (3) to specify the obligations of the receiver/liquidator to make the return and remit the tax due in relation to:

- the supply of services,
- an adjustment required under the capital goods scheme (see also the amendments to section 64 of the VAT Consolidation Act in *section 71 of the Finance Act*), and
- an adjustment required under the transitional rules for immovable goods (see amendment to section 95 of the VAT Consolidation Act in *this section of the Finance Act).*

Section 95

Section 95 deals with transitional measures for supplies of immovable goods. *Paragraph (i)* inserts a new paragraph (c) into subsection (4) which provides that a receiver/mortgagee is obliged to calculate the relevant deductibility adjustment and pay any amount due, where the receiver was appointed or the mortgagee took possession of a transitional property (i.e. a property acquired or developed pre-July 2008) in respect of which the owner had claimed deductibility and the receiver/mortgagee subsequently made an exempt letting of the property.

Commencement

This section has effect from the date of passing of the Finance Act (27 March 2013).

69. Amendment of section 43 of the VAT Consolidation Act (vouchers, etc.)

Summary

This section amends section 43 of the VAT Consolidation Act, which deals with vouchers, etc. The amendment limits the application of the existing rules for supplies of vouchers to domestic sales only.

Details

The amendment to section 43(3) provides that the existing special rule for vouchers being supplied to businesses for re-sale is confined to supplies of vouchers to businesses that are established in the State. This means that a voucher with a redeemable value, which is sold to a business outside the State for onward supply, is not taxable on the sale but rather the tax arises at the point of redemption of the voucher, resulting in tax being accounted for when redemption of the voucher takes place.

Paragraph (a) provides that the special rules governing vouchers, which are supplied for onward sale, are only applied in the case of accountable persons, being persons who are established in the State.

Paragraph (b) provides that where the voucher is supplied onwards by an accountable person, that person is obliged to account for VAT on the consideration received in respect of the supply of the voucher.

Commencement

This section has effect from the date of passing of the Finance Act (27 March 2013).

70. Amendment of section 59 of the VAT Consolidation Act (deduction for tax borne or paid)

Summary

This section amends section 59 of the VAT Consolidation Act, which deals with deduction for tax borne or paid. The first amendment clarifies the definition of qualifying activities and the second amendment provides for deductibility relating to certain property transactions.

Details

Paragraph (a) amends subsection (1)(d) to clarify the definition of "qualifying activities". The amendment brings Irish legislation into line with the relevant provision of the EU VAT Directive.

Paragraph (b) amends section 59(2). The amendment provides that when an immovable good is sold by a receiver or liquidator and where a joint option to tax the sale is exercised, thereby making the purchaser accountable for VAT on the supply of immovable goods on a reverse charge basis, the purchaser is entitled to deduct the VAT incurred (subject to the normal deductibility rules).

Commencement

This section has effect from the date of passing of the Finance Act (27 March 2013).

71. Amendment of section 64 of the VAT Consolidation Act (capital goods scheme)

Summary

This section amends section 64 of the VAT Consolidation Act, which deals with the capital goods scheme.

The amendments to subsection (9) clarify the conditions in an existing provision which allows for relief from a claw-back which can arise on the seller of a capital good in certain circumstances.

A new subsection (12A) provides that where a receiver is appointed or a mortgagee takes possession of a capital good, the receiver or mortgagee is accountable for the obligations of the defaulter under the capital goods scheme for the duration of the receivership or possession.

Details

The capital goods scheme (CGS) is a mechanism for regulating deductibility over the VAT-life of a property. The scheme operates by ensuring that deductibility for a property reflects the use to which the property is put over its VAT-life. It is provided for in sections 63 and 64 of the VAT Consolidation Act 2010. The obligations of the capital good owner are outlined in section 64 and include creating and maintaining a CGS record, calculating (in accordance with various formulae) any deductibility adjustment required and payment of any amount due as if it were tax due. Section 64 also provides an entitlement to an increase in deductibility where relevant.

Subsection (9)
Paragraphs (a) and (b) amend subsection (9) to clarify the existing provisions whereby the seller of a capital good may be relieved of a claw-back, provided for in subsection (8), where VAT on the sale to a connected person is less than the VAT on the purchase.

The amendments clarify the conditions so that the purchaser steps into the shoes of the seller for the purposes of the capital goods scheme, accepting responsibility for any obligations of the seller under the scheme not already fulfilled, and specify that the connected sale is disregarded for the purposes of the Act thereby ensuring that no new CGS life begins at the time of that sale.

New Subsection (12A)
Paragraph (c) inserts a new subsection (12A) which makes the following provisions:

- paragraph (a) contains definitions;

- paragraphs (b) and (c) provide that where a receiver is appointed or a mortgagee takes possession of a capital good, the obligations of the capital good owner are transferred to the receiver or mortgagee for the duration of the receivership or possession. These obligations include maintaining the capital good record, calculating any adjustment in deductibility as a result of a change of use of the capital good and remitting any tax due as a result of that adjustment. Where an adjustment under the capital goods scheme results in an increase in deductibility, the receiver or mortgagee will get the benefit of that increase;

- paragraphs (d) and (e) provide that where the receivership or possession ends without disposal of the capital good (i.e. it reverts back to the owner), the obligations under the capital goods scheme revert back to the owner;

- paragraph (f) provides for apportionment of liability arising from a capital goods scheme adjustment where the receivership or possession commences or ends (or both) during a capital goods scheme interval;

- paragraph (g) provides for apportionment of an entitlement to an increase in deductibility as a result of a capital goods scheme adjustment where the receivership or possession commences or ends (or both) during a capital goods scheme interval;

- paragraph (h) provides that where the obligations of the capital good owner are transferred to a receiver or mortgagee those obligations shall also transfer to any subsequent receiver appointed or mortgagee who takes possession of the good.

Commencement.

This section has effect from the date of passing of the Finance Act (27 March 2013).

72. Amendment of section 80 of the VAT Consolidation Act (tax due on moneys received basis)

Summary

This section amends section 80 of the VAT Consolidation Act, which deals with tax due on moneys received basis. It confirms the Budget increase in the annual turnover threshold for taxable persons using the moneys received basis of accounting from €1,000,000 to €1,250,000.

Details

Section 80(1)(b) allows a taxable person with a turnover of not more than €1,000,000 in any continuous period of twelve months to use the moneys received basis of accounting for VAT. The amendment increases that turnover figure to €1,250,000.

VAT registered traders whose annual turnover does not exceed or is not likely to exceed €1,250,000 million may opt to account for VAT on the moneys received basis rather than on the invoice basis. This means that the trader is not required to pay VAT until payment for the supply is actually received.

Commencement

This section has effect from 1 May 2013.

73. Amendment of section 86 of the VAT Consolidation Act (special provisions for tax invoiced by flat-rate farmers)

Summary

This section amends section 86 of the VAT Consolidation Act, which provides for special provisions for tax invoiced by flat-rate farmers. It confirms the Budget decrease in the farmers' flat-rate addition from 5.2 per cent to 4.8 per cent.

Details

The flat-rate scheme is a simplified and practical method of applying value-added tax to farming. It compensates unregistered farmers, on an overall basis, for the VAT charged to them on their purchases of goods and services. The scheme in general reduces administrative burdens, as it provides that small farmers can remain outside the normal VAT system thereby avoiding the obligations in respect of registration, record keeping and returns.

How does the Farmers Flat-rate Scheme work?
The flat-rate scheme sets out a percentage amount, known as the flat-rate addition, which unregistered farmers apply to their prices when selling to VAT-registered businesses (co-ops, meat factories etc.). The VAT-registered business treats the flat-rate amount as a normal business input in its periodic VAT return.

From 1 January 2013 the flat-rate compensation to unregistered farmers is reduced to 4.8 per cent.

Example

- An unregistered farmer sells goods worth €100 to a meat factory on 1 January 2013;
- The flat-rate addition of 4.8% means the farmer can increase the price to €104.80;
- The factory claims back the €4.80 flat-rate addition as a credit in its normal VAT return.

There is no impact on the price of goods to the final consumer due to the flat-rate addition.

Livestock rate
The livestock rate, which is the VAT rate charged by registered farmers and other businesses on the supply of livestock, live greyhounds and the hire of horses, remains unchanged at 4.8 per cent.

Commencement

This section has effect from 1 January 2013.

74. Amendment of section 120 of the VAT Consolidation Act (regulations)

Summary

This section amends section 120 of the VAT Consolidation Act, which deals with regulations.

The amendment provides for the making of regulations, if necessary, relating to evidence of business controls with regard to invoicing.

Details

Paragraphs (a) and (b) are technical amendments.

Paragraph (c) inserts a new subparagraph (v) into section 120(9)(b) to allow the Revenue Commissioners to make regulations relating to evidence of business controls with regard to invoicing in accordance with section 66(2A) of the VAT Consolidation Act.

Commencement

This section has effect from the date of passing of the Finance Act (27 March 2013).

75. Amendment of Schedule 1 and of Schedule 3 to the VAT Consolidation Act

Summary

This section amends Schedules 1 and 3 to the VAT Consolidation Act.

The amendments to Schedule 1

- provide for changes consequential to the changes to Schedule 3
- clarify the financial services and related agency services included in the list of exempt activities and
- provide for the continuation of the existing VAT exemption for Investment Limited Partnerships.

The amendments to Schedule 3 provide that the services threshold, currently €37,500, applies to the turnover derived by public bodies from the provision by them of facilities for sporting and physical education activities.

Details

Schedule 1
Subsection (1) amends Schedule 1, which lists exempt activities.

Paragraphs (a) and (i) amend paragraphs 5 and 11 of Schedule 1. The amendments are consequential to the amendments being made in *subsection (2)* and have effect from 1 January 2013.

Paragraphs (b), (c), (d), (f), (g) and (h) amend paragraphs 6 and 7 of Schedule 1 and clarify the financial services and related agency services included in the list of exempt activities.

Paragraph (e) amends paragraph 6 of Schedule 1 to provide for the continuation of the VAT exemption for Investment Limited Partnerships. *Section 42 of the Finance Act* provides for amendments to the Taxes Consolidation Act 1997 (TCA) to restore the tax-transparent nature of certain collective investment funds formed under the Investment Limited Partnership Act 1994. The VAT Consolidation Act 2010 contains references to the TCA and those references are now updated in order to ensure the current VAT treatment of Investment Limited Partnerships is preserved.

Schedule 3
Subsection (2) amends Schedule 3 to the VAT Consolidation Act, which lists goods and services chargeable at the reduced rate.

Paragraph (a) makes a technical amendment to paragraph 11.

Paragraphs (b) and (c) amend paragraph 12. The amendments provide that the services threshold for VAT registration, currently €37,500, applies to the turnover derived by public bodies from the provision by them of facilities for sporting and physical education activities. This is in order to provide that public bodies which have become subject to VAT for certain activities can avail of the services threshold like other businesses. It means, for example, that bodies such as local schools who rent out school halls on a small scale basis for sporting and physical education activities will not be obliged to register for VAT unless they exceed this threshold. They can of course elect to become taxable if they so choose.

Subsection (3) applies 1 January 2013 as the date of coming into effect of *paragraphs (a) and (i) of subsection (1)* and of *subsection (2).*

Commencement

Subsection (1)(a) and (i) and subsection (2) have effect from 1 January 2013.
Subsection (1)(b), (c), (d), (f), (g) and (h) have effect from the date of passing of the Finance Act (27 March 2013).