

## Waiver of exemption – Transitional Measures

This document should be read in conjunction with section 96, and section 97(3) of the VAT Consolidation Act 2010 (VATCA) and regulation 35 of the VAT Regulations 2010.

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## Table of Contents

Introduction .....	3
1. Waivers of exemption .....	3
1.1. Background to waivers .....	3
1.2. Cancellation of a waiver .....	4
1.3. Cancellation Amount .....	4
2. Automatic cancellation of a waiver .....	4
3. Connected persons and waivers .....	4
3.1. Connected tenants with 90% VAT deduction .....	5
3.2. Connected tenants and permitted minimum rent .....	5
3.3. Waivers, VAT Groups, and connected persons .....	6
4. Capital Goods Scheme (CGS) and waivers .....	6
Appendix 1 - Section 96(10) of VATCA 2010 - formula to calculate the permitted minimum rent .....	7

## Introduction

This guidance sets out the transitional measures that apply to waivers of exemption for the short-term letting of property that were in place before 1 July 2008. The guidance has been revised following a recent High Court judgement.<sup>1</sup>

Guidance on the VAT treatment of lettings where a waiver does not apply is available on [Revenue.ie](https://www.revenue.ie).

### 1. Waivers of exemption

Waivers of exemption from VAT for the supply of short-term lettings were a feature of the 'old' rules for VAT on property that were in force until July 2008.

Such waivers are not a feature of the 'new' VAT on property rules that came into effect on 1 July 2008, but the legislation includes transitional measures that permit and regulate the continuation of waivers that already existed on 1 July 2008.

No new waiver of exemption can commence on or after 1 July 2008. In addition, an existing waiver of exemption does not extend to a property acquired<sup>2</sup> or developed on or after 1 July 2008.<sup>3</sup>

#### 1.1. Background to waivers

Prior to the introduction of the new system for VAT on Property (1 July 2008), 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 the TDM on [Transitional Properties](#).

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.

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<sup>1</sup> Killarney Consortium v. The Revenue Commissioners [2024] IEHC 732.

<sup>2</sup> 'Acquired' includes a situation where a legacy lease in a property is surrendered to a landlord on or after 1 July 2008.

<sup>3</sup> 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.

## 1.2. Cancellation of a waiver

A landlord may cancel a waiver of exemption. In addition, certain events cause cancellation of a waiver – see Sections 2 and 3 below.

## 1.3. Cancellation Amount

Where a waiver is cancelled, the legislation requires the landlord to calculate a cancellation adjustment and to make a payment (known as the ‘cancellation amount’) to Revenue.

The cancellation adjustment is the difference between the VAT deducted by the landlord in respect of the acquisition or development of let properties and 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.

Following the judgement of the High Court in the case *Killarney Consortium v. The Revenue Commissioners* [2024] IEHC 732, and with effect from 20 December 2024, Revenue will no longer collect the payment of a cancellation amount that may have been due on the cancellation of a waiver.

This updated position regarding collection / payment of a cancellation amount does not change the circumstances in which waiver cancellation occurs.

## 2. Automatic cancellation of a waiver

From 3 June 2009, a waiver is automatically cancelled in the following circumstances:

- The landlord has a waiver of exemption in place on 3 June 2009
- The landlord owns a property which is subject to the waiver of exemption on 3 June 2009, and
- The landlord at any time on or after this date ceases to own (or have an interest in) any such property.

In these circumstances, the landlord's waiver of exemption is deemed to be cancelled on the date that the landlord ceases to own (or have an interest in) property which is subject to his or her waiver of exemption. However, with effect from 20 December 2024, Revenue will no longer collect the payment of the cancellation amount that may have been due on this cancellation of the waiver.

## 3. Connected persons and waivers

From 1 July 2008, most waivers that applied to a letting between connected persons were cancelled. However, the waiver could remain in place where certain conditions were met.

The waiver could be retained for lettings between connected persons where:

- The tenant had a certain level of deductibility on the rents charged, or
- The tenant paid a certain permitted minimum rent.

If a landlord had other properties subject to a waiver (that were not let to connected persons), that waiver was not cancelled. These landlords are treated as having 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.

### 3.1. Connected tenants with 90% VAT deduction

From 1 July 2008, where a connected tenant is entitled to deduct at least 90% of the VAT charged on the rents, then the waiver will not be cancelled but will continue as long as at least that level of deductibility applies.

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. However, Revenue will no longer collect the payment of the cancellation amount that may have been due on the cancellation of the waiver, effective from 20 December 2024.

### 3.2. Connected tenants and permitted minimum rent

Waivers on lettings of property between connected persons could remain in place after 1 July 2008, provided the VAT on the rents is at least the permitted minimum amount. The cancellation of a waiver was not required where a waiver was in place on 18 February 2008, where either:

- The letting that was in place on 1 July 2008 was already 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 was also not required where the waiver relates to a letting of a property held by a person under a legacy lease that was acquired between 18 February 2008 and 30 June 2008 from an unconnected landlord.

The permitted minimum rent was an amount that ensured that an amount equivalent to the VAT deducted by the landlord in respect of the acquisition or development of the property would be accounted for within 12 years (the 12-year rule). Section 96(10) of VATCA 2010 sets out the formula to calculate the permitted minimum rent (see Appendix 1).

The failure, at any point from 1 July 2008 onwards, to meet these conditions will result in the immediate cancellation of the waiver in respect of the relevant

property. However, Revenue will no longer collect the payment of the cancellation amount that may have been due on the cancellation of the waiver, effective from 20 December 2024.

### 3.3. Waivers, VAT Groups, and connected persons

Where a landlord who has a waiver of exemption in place in respect of a letting to a connected tenant becomes a member of a VAT group (of which that tenant is a member) on or after 24 December 2008, then the landlord's waiver is cancelled. This rule ensures that connected persons cannot use the grouping provisions to avoid the rules for lettings between connected parties where a waiver of exemption has been exercised.

However, this rule will not apply when the underlying use of the property is for other than exempt purposes and the property is used by the group for the purposes of making supplies that entitle that group to deduct at least 90% of the VAT incurred by it in relation to those supplies.

## 4. Capital Goods Scheme (CGS) and waivers

The Capital Goods Scheme does not apply to sales of properties which have been subject to a waiver of exemption where that waiver has been cancelled. In such cases, the adjustment period for the CGS is deemed to end on the date the waiver is cancelled. This means there are no CGS adjustments required as the sale will occur outside the adjustment period.

If, however, the sale occurs before the waiver has been cancelled, then the normal CGS rules apply. For further guidance please see the [VAT and Capital Goods Scheme TDM](#).

## Appendix 1 - Section 96(10) of VATCA 2010 - formula to calculate the permitted minimum rent

(10) The formula to be used for the purposes of subsection (9) is –

$$\frac{A - B}{12 - Y}$$

where -

- A is the amount of tax that would be taken into account for the purposes of subsection (3) in respect of the acquisition or development of the immovable goods, if the waiver were being cancelled at the time referred to in subsection (9),
- B is the amount of tax chargeable on the consideration by the landlord in respect of the letting of those immovable goods and paid in accordance with Chapter 3 of Part 9 that would be taken into account for the purposes of subsection (3) if the waiver were being cancelled at that time and that letting were the only one to which that waiver applied, and
- Y is 11, or the number of full years since the later of –

- (i) the date of the first letting of those goods, and
- (ii) the date on which the landlord waived exemption,

where that number is less than 11 years.