# Supply of property

This document should be read in conjunction with section 94 and paragraphs 14 and 15(1) of schedule 3 of the VAT Consolidation Act 2010 (VATCA 2010)

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Revenue
Cáin agus Custaim na hÉireann
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The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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## Introduction

This guidance deals with the supply of property that was completed on or after 1 July 2008, and the supply of properties that were on hand, but not completed on that date.

Supplies of properties that were on hand on 1 July 2008, but were completed prior to that date, are dealt with in freehold interests held prior to 2008 and transitional properties and legacy leases.

## 1. When is a property supplied in the course of business?

When property is supplied in the course of business, rather than in a non-business capacity, Value-Added Tax (VAT) must be considered because:

- VAT may be due on the supply
- a Capital Goods Scheme (CGS) adjustment may be required
- property may be transferred as part of a business.

For VAT purposes, business means any economic activity, whatever the purpose or results of that activity, and whether or not the business is subject to VAT.

A transaction entered into in a private capacity is not done in the course of business. For example, if you sell your private home, you are not doing so in the course of business, even if you are engaged in business.

A landlord or an 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 if you engage in a single property transaction on a once-off basis, you may be acting in the course of business.

For example, if you construct or arrange for the construction of a residence on the site of an existing dwelling for subsequent sale, the sale would be regarded as acting in the course of business. This will apply even if the site was part of the grounds of your private residence.

## 1.1 What is meant by a supply of property for VAT purposes?

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.

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 guidance 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. The creation of a very long lease (a freehold equivalent) is also a supply of property. This would be 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.

While there may be situations where it is not 100% clear whether or not a supply is a supply of a freehold equivalent, in most cases there should be little or no difficulty.

As a general rule, the creation and assignment of standard commercial leases (5, 20 or 35 years) with rent reviews, and other similar situations, are unlikely to be subject to the provision.

However, the creation and assignment of much longer leases (99 to 999 years) for a large premium with peppercorn rent are, in most cases, likely to be subject to the provision.

Where there is any doubt in relation to a particular case, you should contact your Revenue Branch.

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

For a supply of property to take place 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, essentially, the right to dispose of the property.

The transfer of the right to dispose of property is usually regarded as taking place when the contract for sale of the property is completed. This includes circumstances where the property is transferred under a Compulsory Purchase Order. The transfer of the right to dispose of property also takes place at the point at which ownership of a property is vested in another party, such as, the Official Assignee in a bankruptcy case.

In relation to a taxable supply of property, where a payment, or part payment, is made in advance of the supply of property taking place, a charge to tax arises in respect of that payment.

# 2 Is a supply of property taxable?

To come within the charge to VAT, the property must have been:

- developed
  and
- supplied for consideration in the course of business.

The supply of property is taxable only while the property is considered **new**. The following determines when a property is new:

- The first supply of a completed property within five years of its completion is subject to VAT (known as the five-year rule).
- The second and subsequent supply of a completed property within five years of its completion is subject to VAT if it has not been occupied for 24 months in aggregate (known as the two-year rule).
- Any supply of a developed, but incomplete, property within 20 years of when the development ceased (known as the 20-year rule).

The following supplies of property are also taxable:

- Generally, all sales of old properties are exempt from VAT. However, in certain circumstances, the person supplying such a property and the purchaser may jointly opt to have the supply subject to VAT.
- 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, the sale is subject to VAT.
- Where a residential property is developed by a person in the course of a business of developing property, the sale of the property by that person or a person connected with that person is always taxable. The property forms part of the stock-in-trade of that business. This would not apply where residential property is built in the course of a business other than a development business, such as the business of letting property. Whether or not a person is engaged in the business of developing property is a matter of fact in each case to be determined on the basis of objective evidence.

## 2.1 Supply in connection with an agreement to develop property

Supplies of property made in connection with an agreement to develop the property are 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 and, or a 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, if a farmer sells a site (where the sale of that site would not otherwise be liable to VAT) to a private individual who intends to construct a dwelling on the site, the farmer would not be making a taxable supply under this provision.

However, 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. In this situation, the sale of the land is subject to VAT.

**Example 1**

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. The contract that Ms C has 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.

# 3 What is the taxable amount on 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 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.

# 4 What does developed mean?

Development in relation to land is defined as:

- the construction, demolition, extension, alteration or reconstruction of any building on the land

or

- the carrying out of any engineering or other operation in, on, over or under the land to adapt it for materially altered use.

Development, other than minor development (which is covered by section 4.1 below), essentially makes a property new for VAT purposes. For example, where an undeveloped, or old, property is developed, the property is considered new for VAT purposes following the completion of that development.

Land is regarded as developed when:

- a new building is constructed
- an existing building is extended, altered or reconstructed
- an existing building is demolished
- work which adapts the land for materially altered use is carried out. Work which is not designed to make a material alteration in the use to which land is put is not development. Therefore, no account is taken of fencing, land drainage, laying of roads for agricultural purposes and so on.

In relation to development:

- Maintenance and repair work does not constitute development.
- The fact that planning permission had been obtained for development does not, of itself, constitute development for VAT purposes.
- Where a supply of property takes place on foot of a compulsory purchase order, Revenue will not, in general, consider the supply to be taxable solely by virtue of development work carried out by the acquiring body under its statutory powers, after the notice to treat has issued.

**Example 2**

Farmer A owns a two-acre undeveloped field. In 2009, she spent €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 used the field for agricultural purposes.

In 2010, she sold 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 as it was a farm before and still a farm after.

The sale is exempt from VAT as the field is not developed.

**Example 3**

Farmer B owned a four-acre undeveloped field. In 2010, he laid sewer pipes under the land and built a road that traverses the land from one side of the field to the other. The value of this development is €10,000.

Farmer B then sold the land in four one-acre plots. The sale of each of these plots is subject to VAT (for a period of 20 years from when the development is completed) because the development work has materially altered the land (from a farm to building land, serviced site).

## 4.1 What is minor development in relation to a property?

Minor development is a level of development that does not make a building new. It can be described as development on a building that does not (and is not intended to) adapt the building for a materially altered use, provided that the cost of such development does not exceed 25% of the consideration for the supply of the building.

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.

Note: There can be confusion between the concept of minor development and the Capital Goods Scheme (CGS) concept of refurbishment. It may be helpful to consider that minor development is important only when you are trying to decide if a sale is taxable or exempt and where work has been carried out in the past five years on a previously completed building.

Refurbishment is a concept within the CGS. Whenever a person carries out a development on a previously completed building, this constitutes a refurbishment and the refurbishment is a capital good in its own right. Please refer to Paragraph 5 of this guidance for the definition of a 'completed property' for VAT purposes.

There can be several refurbishments for any one property; the adjustment period for each refurbishment is ten intervals, the first of which begins when that refurbishment is completed. The fact that the development work may or may not have been minor is not relevant to its classification as a refurbishment.

## 4.2 What does materially altered use mean?

In determining whether a building has been materially altered, it is necessary to look at what the building was capable of being used for before and after the work was carried out. An indicative list of uses is:

- residential
- agricultural (for example, a barn)
- commercial, professional (for example, retail, wholesale, use of office space for purpose of business and other similar uses)
- derelict
- non-business use (for example, a church or other similar uses).

Whenever a development converts a building from one of the headings above to another, it would be considered to have adapted the building for a materially altered use. However, development that converts a former clothes shop to a retail bank would not be considered to have adapted the building for a materially altered use. This is on the basis that a clothes shop and retail bank would come under the heading commercial and, or professional.

**Example 4**

ABC Ltd has owned two identical warehouses, units X and Y, since 1988. In 2009, work is carried out on each of them. The work is completed at a cost equal to less than 25% of the sale price of each warehouse.

**Building not adapted for a materially altered use**

During 2009, ABC carries out work on upgrading unit 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. Even though the sale takes place within five years of the completion of a development, because the development did not adapt the property for a materially altered use, nor did it exceed 25% of the consideration for the sale, the development is considered as minor development and the sale is exempt, subject to a joint option to tax.

Note: there are CGS implications for the 2009 works (a refurbishment) now that the sale is exempt.

**Building adapted for a materially altered use**

During 2009, ABC carries out separate work on unit 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 adapted the property for a materially altered use, changing it from a commercial building to a residential building. As the sale takes place within five years of the completion of a development, and the development is not considered as minor development because the building was adapted for a materially altered use, then the sale will be taxable under the normal rules. In contrast with the unit X example above, the 25% test becomes irrelevant in this example as the development work adapted the property for a materially altered use and made it new

**Example 5**

It is accepted that the work completed in the following example has not adapted the building for materially altered use and now the 25% test needs to be considered.

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 development, which was completed on 1 June 2010 and cost €250,000.

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 adapt the building for materially altered use 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 takes place within five years of the completion of a development, but the development is considered a minor development because the building was neither adapted for a materially altered use, nor did the cost of development exceed 25% of the sales. Consequently, the sale will be exempt, subject to a joint option to tax.

Note: there are CGS implications for the 2010 works (a refurbishment) now that the sale is exempt.

**Development (exceeds 25% of sale price)**

This scenario uses the same details as outlined above for Mr A, but 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 building 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 has been made new. The sale is taxable.

# 5 When is a property completed for VAT purposes?

Completed in the context of VAT on property means that the development of the property has reached the stage where the property can effectively be used for the purposes for which it was designed. In all cases, one essential requirement for completion is the connection of all of the utility services that will enable the property to be used for the purposes for which it was designed.

The physical state that the property is in when completed, and 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.

The five-year rule for taxable supplies of completed property begins from the date of completion.

Note: The two and five-year rules do not apply to sites. For example, if a person carries out engineering work on or over a site, this would constitute development for VAT purposes. The sale of this site is subject to VAT for a period of 20 years from when the development work is completed.

**Example 6**

D Ltd constructed buildings side by side at numbers 7 and 9 Main Street. Number 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 have been fitted
- the plumbing and wiring are in place and have been connected, but no internal finishing work such as plastering has been carried out.

Number 7 has been completed as it has been finished to the level expected for a commercial unit. Number 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.

## 5.1 When is the supply of a completed property taxable?

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 7**

**Taxable supply of completed building: 5/2 year rules**

D Ltd constructs a property that is completed on 1 April 2010. D Ltd 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 Ltd and is within the period when the property is considered new (first sale within five years of completion), it is taxable.

E Ltd 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. It then sells the property on 1 November 2012. At this point there has been an aggregate of more than 24 months occupation (nine months by E Ltd 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. Therefore, the sale is exempt.

### 5.2 What is the position where a property is not completed at the time of supply?

The supply of a developed, but incomplete, property that is made in the course of business is taxable for 20 years from the date the development ceased. The two and five-year rules only apply once the property has been completed.

**Example 8**

**Sale of uncompleted building**

D Ltd begins construction of a ten-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.

### 5.3 Are there any further exceptions to the two-year, five-year and 20-year rules?

Yes. Where the property is designed as or capable of being used as residential property, the supply by the person who developed it for sale in the course of business (that is, a property developer), or by a person connected with the property developer, is always taxable. The two-year, five-year and 20-year rules do not apply to supplies of residential property by a property developer, builder.

**Example 9**

**Sale of residential property by developer**

Developer A develops 40 houses with a view to sell. They are all completed in June 2011. She sells most of the houses, but lets three of them which she subsequently sells in 2017. The sales of all the houses are taxable since the two and five-year rules do not apply to a developer or 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. These CGS adjustments are the normal annual adjustments based on a claw-back of 1/20 of the VAT deducted.

## 6 What does 'occupied' mean for VAT and property?

A property is occupied when it is being fully used for the purpose for which planning permission for the development of that property 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 of a property begins on the date of occupation following completion.

**Example 10**

D Ltd develops an office block that is completed 15 April 2010. On 1 June, D Ltd 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 four year, nine month lease to Mr X for the third floor. This is not considered occupation, as occupation requires that the property be occupied, 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.

# 7 When is the supply of a property exempt?

When the supply takes place later than the date provided for under the two-year, five-year and 20-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 Capital Goods Scheme (CGS) — other adjustments for further details).

See section 5.3 above for the exception in respect of the supply of residential property.

## 7.1 Can you opt to tax exempt supplies — joint option to tax?

In the case of an exempt supply of property, the vendor and the purchaser may opt to make the supply taxable where both are:

- taxable persons

and

- carrying on a business in the State.

The joint option for taxation cannot therefore be exercised when either or both of the parties are engaged in activities which are outside the scope of VAT. The joint option to tax is a shared decision and must be exercised by an agreement in writing between the parties to the transaction.

Where the option to tax is exercised, the purchaser, and not the vendor, is responsible for accounting to Revenue for the VAT payable, under the reverse charge system. The purchaser should register for VAT if they are not already registered.

# 8 VAT treatment of options, easements and rights of way

**VAT treatment of options**

Where an option is granted to a person for the right to buy a property after a certain period of time, the VAT treatment depends on the VAT status of the underlying asset.

**Example 11**

If A grants B an option for €50,000 to purchase his undeveloped field in two years time for an agreed price, the option is exempt from VAT because the sale of undeveloped land is exempt from VAT.

Conversely, if the option was granted over a new property, the €50,000 would be subject to VAT at the rate applicable to the sale of the property at the reduced rate.

Where an option is granted to purchase a property and the option is exercisable outside of the 5/2 year period, the treatment of the option depends on the wording in the option agreement.

If the option agreement specifies that the joint option for taxation will be exercised, then the granting of the option is subject to VAT at the reduced rate (on the basis that the sale, when it occurs, will be subject to VAT). In such cases, the supply of the option is not subject to the reverse charge.

If, however, the option agreement does not specify that the joint option for taxation will be exercised, then the granting of the option is exempt from VAT.

**VAT treatment of granting of easements and rights of way**

The granting of an easement or a right of way is considered the supply of a service for VAT purposes. The supply is subject to VAT at the standard rate.