Transitional properties - freehold or freehold equivalent interests held prior to 1 July 2008

This document should be read in conjunction with Section 95 and paragraph 14 and 15(1) of schedule 3 of the VAT Consolidation Act 2010 (VATCA 2010)

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Introduction

This guidance deals with the supply of **freehold** or **freehold equivalent interests** in properties that were completed and held at 1 July 2008. These properties are referred to as transitional properties.

Where a property is held at that date but is not completed, please refer to Value-Added Tax (VAT) and the supply of property for further details.

The VAT treatment of a long lease, that was treated as a supply of goods under the VAT on property rules applying prior to 1 July 2008, is dealt with in Transitional properties – legacy leases guidance.

Where a property is sold in connection with a contract to develop the property, the sale is subject to VAT in any event.

1 When is the supply of transitional properties taxable?

1.1 What is the treatment when the vendor was entitled to claim back VAT 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.

Where the property is considered new, 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 vendor and the purchaser may jointly opt to tax the supply, if they are both taxable persons carrying on a business in the State. Where the option to tax is exercised, the purchaser must account for the VAT on the supply on the reverse charge basis.

Example 1

ABC Ltd had a warehouse constructed on its behalf in 2006 for €1,000,000 plus VAT €135,000. The development work was completed on 6 August 2006. ABC reclaimed all of this VAT and carried on its warehouse business from the premises. The warehouse was still held at 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 reclaim the VAT on the acquisition of the property and it is the first sale of a developed property within five years of completion, the sale is taxable.

1.2 What is the treatment when the vendor was not entitled to reclaim VAT 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 vendor and the purchaser may jointly opt to tax the supply if both are carrying on a business in the State.

Where the option to tax is exercised the purchaser must account for the VAT on the supply, on the reverse charge basis.

2 What if further development is carried out on or after 1 July 2008?

This development creates a capital good for the purposes of the Capital Goods Scheme (CGS) and is referred to as a refurbishment.

If the owner of the property uses the property for the purposes of his or her business, their only obligations will be to adjust for any changes of use (from taxable to exempt or vice versa) under the CGS.

2.1 What happens if the redevelopment work makes the transitional property new?

Where development is carried out on or after 1 July 2008 and that development makes the property new (not a minor development), then the property is not treated as a transitional property. In such cases, the normal rules apply to any subsequent sale.

It is important to note that the test of whether or not a property has been made new by virtue of such a development, only applies when the property is sold.

3 Capital Goods Scheme (CGS)

3.1 How does the CGS apply?

In most cases, the CGS only applies in relation to the supply of such properties. The normal annual adjustments under the CGS 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 independent of CGS is required.

If, on or after 23 February 2010, a transitional property is used for the first time, or there is a change of use in the property, the big-swing test will apply to such properties. For more detailed information on the big-swing for transitional properties see Capital Goods Scheme guidance.

Where a transitional property is supplied within the VAT life of the property, the CGS adjustments relating to supplies apply to that transaction.

Exempt sale of a freehold or freehold equivalent interest transitional property

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.

Taxable sale of a freehold or freehold equivalent interest transitional property

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.

CGS rules for a freehold or freehold equivalent interest acquired on or after 1 July 2007 and prior to 1 July 2008

In such cases, unless the purchaser has adjusted the input credit by reference to taxable use, 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.

3.2 What is the CGS adjustment period?

The CGS adjustment period in relation to a freehold or freehold equivalent interest in a completed property held at 1 July 2008 is a period of 20 years from the acquisition of the interest.

Where such property has been developed since its completion or acquisition, this development creates a capital good for the purposes of the CGS and is referred to as a refurbishment. The CGS adjustment period for this refurbishment is ten intervals.

The legislation states that if the property has been developed since the acquisition or creation of that interest, the adjustment period is 20 years from the date of the most recent development of those goods (section 95(12)(c) VATCA 2010). Revenue accepts that this clause will not apply to such property where the person who owns that freehold interest carries out a development and that development is a refurbishment for VAT purposes.

Example 2

Mr K acquires an undeveloped field (no VAT charged) in 1995. As no VAT was charged on the acquisition, this is not a capital good. A property is developed to completion in 2005 and VAT is incurred on the development.

This development created a capital good and the adjustment period for this capital good is 20 years from the completion of the development.

Example 3

Ms S develops a building to completion in 2002. This creates a capital good with an adjustment period of 20 years. In 2009, Ms S carries out a development of the property. This creates a separate capital good (being the refurbishment) with an adjustment period of ten intervals.

Even if this refurbishment was carried out prior to 1 July 2008, the adjustment period would still be ten intervals from the date of completion of the development.