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Tax Stream

Topical VAT Issues

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OMNIPro SEPTEMBER FEST

VAT ON PROPERTY – COMMERCIAL PROPERTY TRANSACTIONS

29 SEPTEMBER 2020

PATRICK FANNON

SENIOR TAX MANAGER

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AGENDA AND OVERVIEW FOR TODAY'S SESSION

- Introduction to VAT on Property rules - focus on key areas in the context of interests in commercial property
 - Supplies of Immovable Property
 - Overview of the Capital Goods Scheme
 - Lettings of Immovable Property
 - VAT documentation of sale
- Overview and close
- Questions



INTRODUCTION TO THE VAT ON PROPERTY RULES – HISTORIC OVERVIEW

- There were wholesale changes to VAT on Property rules which came into effect from 1 July 2008
- The new rules introduced a more “European feel” i.e. the current rules are now more aligned to the VAT on Property treatments which can apply to transactions in other European jurisdictions
- The introduction of the “new” VAT on Property rules in fact dovetailed perfectly with the wider property market crash at the time. The result was that over the initial number of years the legislation itself was not really been tested due to the minimal level of transactions
- However in more recent years, with the recovery in the property market, and with the increase in distressed sales, the legislation is now beginning to be fully considered and indeed Revenue’s guidance and practical application has progressed and expanded
- In the context of the recent pandemic, there is likely again to be an increased focus in this area in the context of any further distressed sales, tenants seeking surrenders/revised terms of letting
- The key to bear in mind with any VAT on Property transaction is that there are numerous traps/pitfalls for the unwary meaning a general working knowledge is very important as well as an overall awareness as to when specialist advice/consultation is required. Where the matter of VAT liabilities and costs may be a factor, VAT can oftentimes be used as a ‘bargaining chip’ in commercial transactions to agree overall consideration and terms, most likely in the case of seeking to agree revised consideration to compensate for any VAT cost



INTRODUCTION TO THE VAT ON PROPERTY RULES – HISTORIC OVERVIEW

The “Old” VAT on Property rules were the rules which were in place prior to 1 July 2008. Whilst this session does not intend to cover the full extent of these rules in any detail, a general overview is important to have and hence further summary commentary and notes have been included in the documentation by way of a general reference.

The “Transitional” rules refer to interests in property in place prior to the implementation of the new rules, of which there are 4 separate categories of such interests, the most relevant in the context of current transactions being the provisions which may apply to the sale of a reversionary interest and the surrender or assignment of a long lease which may have been in place prior to 1 July 2008. It should be noted the reference to “Transitional” is somewhat of a misnomer as we are still in practice dealing with a number of interests which fall within these areas and hence requirement to consider these measures likely to be with us for many years. A detailed review of these measures is beyond the scope of this session, but important to note in terms of ensuring further detailed review / guidance where relevant to such case.

The current VAT on Property rules have been effective from 1 July 2008. This session is to focus in detail on the current rules in terms of application/overview and include reference to implications with regard to the interaction with the transitional rules to the extent it is relevant.



VAT ON PROPERTY

WHEN DO YOU NEED TO CONSIDER THE RULES APPLYING TO THE SALE OF A COMMERCIAL PROPERTY?

1. Is the Vendor acting in the course or furtherance of business in terms of the sale of their interest?
 - The sale of a property by someone acting in their own private capacity such as the sale of their private home is outside the scope of any charge to VAT
2. Confirm that there is indeed a sale of a property
 - Whilst this may sound obvious, important at the initial stages to confirm with the solicitors to the transaction that there is a process in place in terms of the drafting of a Contract for Sale and supporting Pre Contract VAT Enquiries – to be discussed on further detail later in the session
3. Proceed to assess and prepare analysis as to the VAT treatment of the sale
 - The approach and the extent of the review in this regard will be dependent upon whether you are acting on behalf of the vendor or the purchaser

The purpose of this session is to provide a general overview as to the VAT on Property rules which apply in the event that there is a relevant sale on an interest in commercial property, as well as outlining details in terms of the treatment of an interest being a letting of a property.

VAT on Property is a complex area of VAT practice, and hence whilst a general overview of the provisions is beneficial, it is advisable that specialist advice is obtained where required in respect of any transaction

COMPARISON OF THE 'OLD' AND 'NEW' RULES - KEY DIFFERENCES

Key areas	Post 1 July 2008	Pre 1 July 2008
VAT treatment on sale	Treatment on sale dependant on whether 'old' or 'new' property from a VAT perspective	Sales of developed property generally subject to VAT
VAT treatment of lettings	All lettings (regardless of their term) are ordinarily exempt from VAT - Landlord's Option to Tax	Lettings under 10 years generally exempt with waiver / over 10 years VATable supply
VAT recovery	The recovery of VAT is now based on the usage of the interest/property over its VAT life – the Capital Goods Scheme	VAT recovery generally was based the on initial use of the property

VAT ON PROPERTY

SUMMARY CONSIDERATIONS IN TERMS OF THE SALE OF A COMMERCIAL PROPERTY

'New' Property

- The sale of a 'new' property (freehold interest or freehold equivalent) is subject to a charge to VAT to be levied by the vendor. The rate of VAT to be applied is the reduced rate in force, which is currently 13.5%
- What is a 'new' property in the context of the VAT on Property rules, this can be summarised into two key areas:
 - A property which has been developed to completion within the last five years prior to the date of the sale, or
 - A property which is an old building which would have been completed but since has been significantly redeveloped within the last five years prior to the date of the sale
- What is generally meant by the terms 'development' and how is it applied:
 - In the case of a building, development would be considered to be any construction, alteration, reconstruction, extension and demolition of any building on the land ("CARED")
 - In the case of a land asset, development can also extend to engineering or other operation in, on, over or under the land to adapt it to materially altered use



VAT ON PROPERTY

SUMMARY CONSIDERATIONS IN TERMS OF THE SALE OF A COMMERCIAL PROPERTY

'Old' Property

The sale of an old completed property (i.e. effectively not a 'new' property) is exempt from the charge to VAT. This treatment would also apply to the sale of say a greenfield land site which has not been the subject of any material alternation or works.

There is the concept of a Joint Option to Tax ('JOT') whereby the Vendor can request the Purchaser to agree to the JOT which would make the sale VATable. This would typically arise in cases where the Vendor would be looking to avoid a clawback to VAT previously recovered on making the sale.

Further detailed commentary on the various categories of exempt sale are outlined below.

Incomplete or partially developed property

It is important to note that the sale of any incomplete or partially developed property which has not yet been completed is generally always liable to a charge to VAT at the reduced rate. The only exception to this is in the case that the last development of the property occurred more than 20 years prior to the date of the sale (i.e. not developed in the last 20 years).

VAT ON PROPERTY

THE CATEGORIES OF 'EXEMPT' SALES OF PROPERTY

- There are five categorisations of property which can be considered as 'old' and thereby exempt from the charge to VAT on sale:
 1. Undeveloped land (land not developed in the last 20 years)
 2. Sale of old property
 3. Sale of old buildings
 4. Second sale of property
 5. Second sale of buildings

If a property does not come within the exemption under any of the categories of exemption above the sale of the property will be considered as subject to a charge to VAT on sale.



VAT ON PROPERTY

1. UNDEVELOPED LAND

- The sale of undeveloped land is generally exempt from the charge to VAT.
- However, there is an exception to this rule -
 - Undeveloped land sold in connection with a development agreement
 - If an undeveloped site is sold and in connection with that supply an agreement is entered into to develop the site (by a connected party), VAT applies on the entire site and development contracts
- It is important to note the obtaining of planning permission in respect of a land asset will not be considered as development of that asset.



VAT ON PROPERTY

2. SALE OF OLD PROPERTY

- A 'old' property is one which has been completed and have not been developed in the past 5 years.
- **Completed** means:
 - Goods (i.e. property) which can be effectively used for purpose that they were designed
 - Apart from finishing or fitting work that would normally be carried out by or on behalf of the person who would use them.
 - Utility services must be connected
 - Revenue notes offer further guidance in terms of cases of general finishing and fitting works: *"Finishing and fitting out 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".*



VAT ON PROPERTY

3. SALE OF OLD BUILDINGS

- This refers to the sale of an building which has been completed and only subject to minor development in past 5 years.

Minor Development is:

- Development cost did not exceed 25% of sales consideration and
- Development did not materially alter the use or intended use of the building.



VAT ON PROPERTY

4. SALES OF USED 2ND HAND PROPERTY

- This refers to cases of the sale of property which has been completed in the five years prior to sale and:
 - The property was occupied for an aggregate of 24 months after the most recent completion prior to the date of the sale,
 - The property has not been significantly developed since that most recent completion, and
 - There was a previous VATable supply of the property to an unconnected third party.

Occupied means:

- The property is occupied and fully in use following completion.
- If property is let, the property must be occupied and fully in such use by the tenant.



VAT ON PROPERTY

5. SALES OF USED 2ND HAND BUILDINGS

- This refers to case where a property is completed within past 5 years and:
 - Property was occupied for an aggregate of 24 months after most recent completion at the time of the sale.
 - There was a previous supply to an unconnected party since completion.
- Any re-development since completion:
 - Did not adapt the building for a materially altered use and
 - The cost did not exceed 25% of the sales price.



VAT ON PROPERTY

SALE OF INTERESTS IN RESIDENTIAL PROPERTY

Whilst residential property sales are not the immediate focus of this session, it is important to note that the sale of an interest in residential property will always be liable to a charge to VAT at the reduced rate where:

- It is sold by a developer/person connected with a developer, and
- The developer was entitled to recover VAT in respect of the development of the property

In such cases, the rules in terms of interests in commercial property as we have just discussed do not apply and are not relevant to the analysis



VAT ON PROPERTY

JOINT OPTION TO TAX OF AN EXEMPT SALE

- In the event that the sale of a property is exempt from VAT, there is the option of agreeing a Joint Option to Tax ('JOT') which would have the effect of bringing the transaction within the scope of a charge to VAT.
- For a JOT to be exercised, it must be agreed between the Vendor and the Purchaser as part of the sales transaction.
- In the regard, the Purchaser must be an is accountable person and liable to pay the tax
- The charge to VAT is accounted for by the Purchaser under the 'reverse charge' mechanism.
- The Vendor is not liable to account for the VAT – this is in contrast with a sale of a 'new' property that is ordinarily subject to a charge to VAT in principle, where in such cases VAT has to be charged to the Vendor and physically paid over as part of the sales transaction
- If a JOT is exercised, it does not imply that it should apply to all sales and acquisitions of property interests by a Vendor/Purchaser but rather it is specific to the sale of each interest in property



VAT ON PROPERTY

JOINT OPTION TO TAX OF AN EXEMPT SALE

- In the case of advising a Vendor who may have recovered VAT in respect of a exempt property, the initial reaction may be to automatically seek a JOT as in such case the Vendor would not be subject to any clawback of VAT (adjustment under the Capital Goods Scheme, details of which will be discussed in further detail later). However, it is important to note that such course of action may not necessarily always the right answer
- In terms of advising the purchaser, the view could be why would you consider the acquisition of a property which has a charge to VAT liability and creates as Capital Good for you, when it otherwise could be effectively left outside of the VAT net?
- In such cases, on a subsequent sale within the VAT Capital Good life of the property, the Purchaser would need a subsequent purchaser to agree to a JOT to protect their own VAT recovery.
- Hence, in such case, there may be some room for negotiation in terms of the sale consideration in order to work around the JOT e.g. if the Vendor does have a VAT cost in respect of the sale, is the Purchaser willing to compensate the Vendor for such cost (subject to the quantum of same) in order to avoid the need to agree a JOT?

VAT ON PROPERTY

JOINT OPTION TO TAX OF AN EXEMPT SALE

➤ What at the risks for the Purchaser?

- The Creation of a Capital Good record which must be maintained
- The obligation to monitor the use of property for next 20 years or until sold
- The exposure to VAT costs for any VAT exempt use over the next 20 years
- In the event of a future sale as an exempt property within the next 20 years, they would have to get the Purchaser to agree to a JOT or else incur a VAT cost.

➤ What is the key benefit for the Vendor

- It avoids any VAT cost in terms of a clawback of VAT previously recovered
- It may in fact result in an increase in terms of the Vendor's ability to recovery VAT on development which may not have previously been recovered



VAT ON PROPERTY

TRANSFER OF BUSINESS ('TOB') PROVISIONS

- Notwithstanding the determination as to whether an interest in property is considered 'new' or 'old' from a VAT perspective, there is a relieving provision which can automatically apply to cases where an interest in property is being sold as part of the Transfer of a Business ('TOB') between two accountable persons e.g. the sale of a retail property together with the stock and other assets of the business.
- The TOB provisions can also apply to cases where the property being sold is the subject of an existing letting or part of an letting business carried on the Vendor.
- Revenue's Tax and Duty Manual on the application of the TOB provisions is a useful guide and copy of same is included as part of this session.
- The TOB provisions will apply automatically and have the effect of deeming the transfer of the interest as not being a supply for VAT purposes.
- The implications for the Vendor/Purchaser in such cases will depend on whether the interest in the property would have been within the scope of the charge to VAT or exempt.



VAT ON PROPERTY

TRANSFER OF BUSINESS ('TOB') PROVISIONS

- If property would have been liable to VAT when sold if TOB had not applied:
 - There is a deemed supply of property notwithstanding that there is no VAT charged which is relevant for the Vendor's Capital Good
 - It is necessary to assess how much VAT would have been charged had TOB not applied, and any difference when compared to VAT recovered to be repaid to Revenue
- If sale of property would have been exempt if TOB had not applied:
 - The Purchaser will be deemed to 'step into the shoes' of the Vendor in terms of taking over the Vendor's existing Capital Good and the VAT life of the Capital Good will continue to run.
 - In such cases, it is important that the Purchaser obtain from the Vendor copy of the Capital Good record as part of the sales process



VAT ON PROPERTY

CAPITAL GOODS

- Prior to examining the various categories of sales which can be exempt from the charge to VAT, it is worth first taking a look at the concept of the Capital Good for VAT purposes as it arises in the case where VAT has been incurred and recovered on the development/acquisition of an interest in property.
- A Capital Good is in effect an interest in property in which taxpayer was entitled to recover VAT.
- Every capital good has a VAT life. These intervals generally number to 20 intervals in total in the case of VAT incurred on the development/acquisition of an interest in property, but can be 10 intervals in the case of a refurbishment of a property
- “Intervals” broadly mirror the financial year of the taxpayer
- The entitlement to recover VAT is broadly based not only on the first use of the property but rather on how the property is used during the VAT life i.e. look at the end of each interval to assess VAT recoverability and make adjustments if necessary
- The ultimate outcome is that the level of VAT recovery should reflect the use of the property over its VAT life.



VAT ON PROPERTY

CAPITAL GOODS

- It is possible to have two or more capital goods operating on the same property – one say for property acquisition and one say for subsequent refurbishment
- If there is a sale of the interest in property which falls outside of its VAT life, there is generally no impact in terms of the Capital Good.
- However, if there is a sale within the VAT life, it will be important to consider potential VAT adjustment – be that a VAT clawback or additional VAT recovery.
- The aim is to ensure that the percentage of VAT deducted and retained by the owner at the end of the VAT life of the property mirrors the percentage of VATable use of the property during the VAT life.
- In a nut shell, if say overall 65% VATable use over VAT life of property, then the Capital Goods Scheme ensures that 65% of the VAT on acquisition and/or development is recovered by owner.

VAT ON PROPERTY

CAPITAL GOODS – INTERVALS

- An initial deduction of the VAT is determined in the *initial interval* year based on the percentage VATable use in that year
- Initial interval is 12 month period following acquisition/development. Initial interval commences on completion of development or, if acquired, the purchase date.
- The second interval period runs from the end of the initial period to the end of the accounting period.
- Remaining intervals are 12 months to the end of the accounting period (usually 31 December/accounting year end).
- An example of a Capital Good record and how the intervals are applied is included as part of the documentation to support this session.
- Each subsequent year, a decrease or increase in the percentage VATable use that year – when compared to the percentage VATable use in the first year - results in:
 - Decrease in VATable use - repay VAT to Revenue
 - Increase in VATable use - additional refund of VAT
- There are provisions referred to as the 'Big Swing' which can accelerate the level of adjustment in any one year where the change in use has been greater than 50%



VAT ON PROPERTY

CAPITAL GOODS – POTENTIAL ADJUSTMENT ON SALE OF PROPERTY

Given that a Capital Good can be subject to adjustment during its VAT life, there can be implications arising on the sale of a property which can be broadly summarised as follows:

1. If VAT applies to the sale, the VAT is deemed to have applied for remaining intervals in adjustment period i.e. the Vendor is granted full input for VAT previously recovered.
2. If VAT exempt sale, there is a potential clawback of VAT which may have been previously covered and the remaining intervals are treated as being for a VAT exempt use.

There are other provisions which can impact on the determination of the treatment of a Capital Good, namely in the case where the Transfer of Business ('TOB') provisions may apply to a sale, the details of which are discussed later in this session.



VAT ON PROPERTY

DOCUMENTATION ON SALE

Pre-Contract VAT Enquiries

- The preparation of and review of this document is fundamental to considering the VAT position to the applied in the context of the sale of a commercial property.
- The document effectively sets out the proposed VAT treatment of the sale by the Vendor and the VAT history in respect of the property where it is relevant to the Purchaser.
- The document is prepared by the Law Society and should be raised by a Purchaser/Purchaser's Solicitor on the Vendor/Vendor's solicitor.
- The Purchaser should ensure full replies are received pre-contract.
- The documents provides important VAT information to the Purchaser and hence it should be reviewed in detail and specialist assistance/advice obtained as required.
- In the case of the Vendor, it is standard that the solicitor may ask the Vendor and/or their accountant to complete the details of the document – again specialist assistance/advice may be required.
- The Vendor/their advisers should be satisfied of the VAT status of the property and the accuracy of the replies.
- The Purchaser/their advisers should ensure to raise any clarifications/further requests of the vendor/their advisers in the event it is necessary.
- It is important to be conscious of any cases involving a receiver/liquidator – the required VAT information may not be forthcoming due to lack of access to information, and hence it may be necessary for the Purchaser to take a view/position on acquiring the property on a risk based approach – commercial considerations will be relevant here.



VAT ON PROPERTY

DOCUMENTATION ON SALE

Pre-Contract VAT Enquiries

- Statement to the Purchaser's Status will be required notably in the case of a JOT or TOB applying to the sale
- Document is divided into 7 parts
 - Section 1 - No VAT chargeable on the sale
 - Section 2 - Vendor charges VAT at 13.5% rate
 - Section 3 - Purchaser self accounts for VAT at 13.5% rate
 - Section 4 - Transfer of Business
 - Section 5 - Vendor charges VAT at standard rate
 - Section 6 - Sale of Let Property
 - Section 7 - Tenant's Refurbishment

VAT ON PROPERTY

DOCUMENTATION ON SALE

Special Condition 3 to the Contract for Sale

- There is a standard VAT clause for inclusion on any Contracts for Sale as set out by the Law Society of Ireland.
- It provides agreed template clauses which address the relevant legislative provisions which need to be referenced relevant to the VAT treatment applying to the sale.
- The contract is a Vendor document, therefore important it is drafted to afford maximum protection for the Vendor.
- The relevant clauses will make it clear as to the VAT treatment applied and hence no ambiguity at a later date.
- The Pre Contract VAT Enquiries will provide the roadmap for which clauses need to be included in the Contract for Sale.
- It should be noted that in the case of a sale which is exempt from VAT and details of the VAT history are not relevant to the Purchaser, it can be appropriate for the Special Condition 3 to be deleted in its entirety from the Contract for Sale.



VAT ON PROPERTY

COMMERCIAL LETTINGS

- There is no distinction between leases subject to the length of their terms, unlike the 'old' VAT on Property rules.
- All lettings are VAT exempt in principle – effect is a potential loss of VAT input credit for the Landlord if they had recovered VAT on the initial acquisition or development of the property.
- However, the Landlord can “opt” to charge VAT on lettings, with the exception for “connected” parties as outlined below in further detail. If the option to tax is exercised, the rents are liable to VAT at the standard rate VAT. The Option to Tax is on a letting by letting basis.
- Any premium on the lease or any payments made on a future surrender/assignment of the lease will be liable to standard rate of VAT also if the Landlord’s Option to Tax has exercised
- Landlord will have VAT registration and filing obligations.
- Unlike in the case of the sale of a property under a JOT, for lettings the Option to Tax is at the landlord’s discretion
- The Landlord’s Option to Tax is typically executed by inclusion of a specific clause in the Lease Agreement. Absent this, a separate letter/document noting same can be put in place (a template of which is included as part of the documentation for this session).

VAT ON PROPERTY

COMMERCIAL LETTINGS

- A landlord may not opt where:
 - landlord and tenant or occupant are connected unless tenant or occupant is entitled to recover at least 90% of the VAT chargeable on the letting,
 - A person connected to the landlord commences to occupy the property e.g. a sub let (if 90% rule not satisfied),
 - Property is a house/apartment or similar property to the extent the property is to be used for residential purposes.
- An Option to Tax that has been exercised ceases immediately when the let property is used for the above (even if inadvertently)
- The decision as to whether to exercise the Landlord's Option to Tax may be contingent on the commercial sensitivity of the tenant to a charge to VAT e.g. VAT would be an additional cost for a tenant engaged in VAT exempt activities.
- It is important from the Landlord's perspective that the terms of any rental agreement are clear that the rents under the lease are exclusive of VAT

VAT ON PROPERTY

AREAS TO NOTE BEYOND SCOPE OF THIS SESSION

There are a number of key areas which are initially beyond the scope of the remit of this session, but are important to be aware of these in the context of any property transactions in the event further review is required. Some of the most pertinent areas are noted below:

➤ **Transitional interests in property – the sale/acquisition of a reversionary interest**

A reversionary interest is in effect the sale of the remainder interest in a property from which a long lease would have been granted on or before 1 July 2008 (referred to as a 'legacy lease') When examining the details of a sale of commercial property, you should ask yourself the question is this the first sale of an interest in a property which was completed prior to 1 July 2008 with the benefit of a legacy lease? If so, the transaction may be exempt from VAT and careful review/consideration in conjunction with a specialist adviser is advisable.

➤ **Transitional interest in a property subject to a legacy lease – any future assignments and surrenders**

There are various VAT accounting and Capital Good obligations which may arise in such cases, hence if it is apparent that a proposed acquisition of a property interest may be subject to a legacy lease it is important to ensure all relevant details are acquired and careful review/consideration in conjunction with a specialist adviser is advisable.



VAT ON PROPERTY

AREAS TO NOTE BEYOND SCOPE OF THIS SESSION

- Is there going to be a **merger of freehold and leasehold interests** as a result of this transaction, and if so has the VAT treatment been carefully considered?
- From a Vendor's perspective, is the sale of the interest in property the last of such interests which were subject to a **Waiver of Exemption under the old rules prior to 1 July 2008?**

If this is the case, the Vendor would be required to consider the review of a Cancellation Sum arising on the sale by reason of it being the final property on which waiver of exemption was in place. This cancellation sum is effectively measured by reference to the VAT recovered by the Vendor compared with VAT charged by the Vendor. This is an additional cost for the Vendor and subject to specific rules in terms of calculation, and careful review/consideration in conjunction with a specialist adviser is advisable.







VAT ON PROPERTY

KEY TAKE AWAYS FROM TODAY

- VAT on Property is a complex area in particular with regard to the sale of interest in commercial property, and seeking specialist advice is oftentimes therefore warranted and your client should be appreciative of that fact.
- Important to have a general working knowledge and overview to offer initial assistance to your client.
- Be familiar with the documentation which will accompany a property transaction and how to interpret same.
- Be conscious and aware as to when further specialist advice may be required and in the best interests of your client – avoid any temptation to advise on matters if uncertain on any aspect given the potential cost implications which may arise.
- Engage early in the sales process when it comes to VAT matters, so that it is not a matter which can either delay the process or cause concern closer to the conclusion of the sales process.
- Be aware of your client's obligation to maintain VAT records such as the Capital Good as it will be relevant in the context of a future sale.



Thank you

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AN OVERVIEW OF THE 'OLD' VAT ON PROPERTY RULES

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AN OVERVIEW OF THE 'OLD' RULES

WHEN WAS A SUPPLY OF IMMOVABLE GOODS SUBJECT TO VAT?

A supply of immovable goods occurred for VAT purposes where:

1. The property had been *developed* in whole or in part since 31/10/1972
2. The person making the supply (disponer) must have had *an interest* in the property
3. There must have been a *disposal of an interest* in the property
4. The disponer must have been *entitled to an input deduction* on the acquisition and development of the property
5. The disposal must take place *in the course of furtherance of a business*

AN OVERVIEW OF THE 'OLD' RULES

SUMMARY

- The sale of a developed property (since 1972)
 - If the property was sold with the benefit of a long lease in place, it was generally not VATable
 - Without the benefit of any lease - generally VATable
- The lease of a developed property
 - Short term (<10 years):
 - The letting was a supply of a service which was VAT exempt
 - Unless there was a waiver of exemption in place by the Landlord to apply to all of their short term letting: VAT would have applied at the standard rate
 - Long term (>10 years)
 - Regarded as a supply of immovable goods
 - VAT was accounted for based on the capitalised value of the lease via a specific procedure at the time referred to as a VAT 4A/4B procedure
 - VAT would have applied at the reduced rate of VAT
 - The tenant would have been obliged to account for VAT
- VAT Recovery was usually based on 1st year's use of the property

Transfer of Business

This document should be read in conjunction with sections 20(2)(c) and 26 of the VAT Consolidation Act 2010.

Document last updated June 2020.



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Introduction

This guidance sets out the VAT treatment of business assets disposed of by way of a transfer of a business. It should be noted, in relation to the examples provided in this manual that;

- the range of examples provided is not exhaustive, and that
- unless specifically stated otherwise, the purchaser in each of the examples provided is an accountable person.

These provisions, generally referred to as Transfer of Business relief (TOB), are aimed at reducing compliance costs for traders. The intention of the relief is to remove from the transferee the requirement to pay VAT on the acquisition of assets to which the relief applies, where he or she would have had an entitlement to deduct some or all of the VAT payable. The legislation provides that where assets are transferred in circumstances where TOB provisions apply it is deemed that no supply has taken place for the purposes of VAT.

Where the circumstances surrounding a transfer of assets are such that TOB provisions apply and VAT is not therefore chargeable on the transfer of those assets, the application of the provisions is mandatory. Traders are advised that when they acquire assets in circumstances where TOB provisions might apply they should, in cases of doubt, check with their local Revenue District before paying any VAT invoiced by the vendor in respect of such assets. Where a transfer of assets falls within TOB provisions, it is important to note that any VAT paid by a purchaser to a vendor in respect of that transfer will not be deductible as the transfer is deemed not to be a supply for VAT purposes.

This guidance applies to assets transferred on or after the date of publication, but where assets transferred on or after that date were subject to binding contractual arrangements put in place prior to that date, previous guidance will apply.

1 Legislative basis for TOB

Section 20(2)(c) of the Value-Added Tax Consolidation Act 2010 (VATCA 2010) provides that a transfer of ownership of goods, being the transfer to an accountable person of a totality of the assets or part thereof of a business, even if that business or part thereof had ceased trading, where those transferred assets constitute an undertaking or part of an undertaking capable of being operated on an independent basis, is deemed not to be a supply for VAT purposes.

Section 26 of the VATCA 2010 provides that the transfer of goodwill or other intangible assets of a business, in connection with the transfer of the business or part thereof, or in connection with the transfer of ownership of goods that qualify for relief under section 20(2)(c), is deemed not to be a supply for VAT purposes when the transfer is between an accountable person and a taxable person who carries on a business in the State or between a person who is not an accountable person and another person.

The provisions of section 20(2)(c) and 26 are based on the provisions found in Articles 19 and 29, respectively, of Council directive 2006/112/EC.

It should be noted that:

- The definitions of accountable person and taxable person are set out in section 2(1) of the VATCA 2010. For the purposes of section 26 of the VATCA 2010 the term accountable person does not include a person registered for VAT only for the purposes of accounting for intra-Community acquisitions or services received from outside the State.
- Where a person acquiring a business, or part of a business, is an accountable person the transferor shall apply the transfer of business provisions notwithstanding that the transferee has not at the time of transfer received a VAT registration number.

2 Scope of TOB relief

In the context of the Transfer of Business provisions the VAT law refers to the transfer of a totality of the assets, or part thereof, of a business. The Court of Justice of the EU has provided guidance as to what constitutes “a totality of assets, or part thereof” as follows:

The concept of a transfer of a totality of assets **“must normally be given an autonomous and uniform interpretation throughout the Community;”** [Zita Modes, paragraph 34, Case C-497/01].

“Having regard to this purpose, the concept of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof must be interpreted as meaning that it covers the transfer of a business or an independent part of an undertaking including tangible elements and, as the case may be, intangible elements which, together, constitute an undertaking or a part of an undertaking capable of carrying on an independent economic activity, but that it does not cover the simple transfer of assets, such as the sale of a stock of products.” (Zita Modes, paragraph 40).

The components of a business can typically include the following:

- premises
- employees
- plant and machinery
- stock
- goodwill
- intellectual property
- debtors.

The absence of one or more of these components from the assets being transferred will not automatically preclude the application of TOB relief to the transfer as, for example, there may be no plant, machinery or stock where the business is a service business. The relief does not cover the simple transfer of assets and whether assets being transferred consist of a “totality of assets” or “part” of a totality of assets, the transferred assets must together constitute a business undertaking capable of being operated on an independent basis.

2.1 Tangible Assets

TOB provisions apply to tangible assets where the transferee is an accountable person in this State and where the transferred assets are capable of being operated on an independent basis:

- to carry on the same or a similar business,
- for the purposes of the transferee’s own business, or
- to carry on a different business using the assets acquired.

The relief applies even if the business or part of the business being transferred has ceased trading.

2.2 Intangible Assets

The transfer of intangible assets such as goodwill or intellectual property rights is capable of coming within the TOB provisions. As with tangible assets, to satisfy the conditions for applying TOB, the intangible assets must be transferred as part of an amalgam of assets which together are capable of operating as a business on an independent basis.

2.3 Multiple Businesses/Undertakings

Where a business or an independent part of an undertaking, to which TOB provisions apply, is transferred in conjunction with other assets which do not form part of the assets of that business or undertaking, then the application of TOB provisions does not extend to those other assets except to the extent that some or all of those assets, in their own right, constitute an amalgam of assets coming within TOB provisions.

In this context the CJEU has held, with regard to the sale of the assets of an undertaking consisting of the provision of management services together with the shares in the company to which management services were provided, that the sale of those shares could not fall within TOB provisions as the holding of those shares was a separate undertaking to the provision of the management services.

“With regard, in the third place, to the relevance to the answer given of the fact that the transfer of 30% of the shares is closely linked to the management activities carried out by the vendor for the company in which it held its shares, it should be noted, as the Netherlands and United Kingdom Governments point out, that the cessation of the management activities appears to be the direct and logical result of the sale of X’s shareholding.

It would be otherwise only if the vendor’s management activities had been an autonomous part of its own undertaking that could be operated independently by the transferee and for which the transferee had paid a consideration separate from that of the price of the shares. However, in such a case, the transfer of a totality of assets would cover only the management activities, and not the disposal of shares, because the two transactions relate to different undertakings.” [paragraphs 52 and 53, X BV, Case C-651/11].

Whether or not all of the assets being transferred in such circumstances were assets of the business being transferred is a matter of fact to be determined in respect of each case.

Scope of TOB Relief - Examples

1. The sale of an oil tanker, which had been used in the course of carrying on a business, would not of itself be capable of coming within TOB provisions, whereas:
 - a. the sale of such an oil tanker in conjunction with a totality of assets which made up an oil delivery business in the course of which the oil tanker had been used,
 - b. the sale of such an oil tanker in conjunction with other business assets, such as customer contracts for delivery of oil or goodwill, or
 - c. the sale of such an oil tanker which had been used in the course of a business consisting of leasing oil tankers, where the sale included an existing contract for the lease of that vehicle,are all capable of falling within TOB provisions.
2. The sale of premises together with manufacturing plant, stock, raw materials and goodwill can come within the TOB provisions whereas the sale of each of these assets independently of each other could not.
3. The transfer of intangible assets consisting of Intellectual Property which are subject to existing licence agreements for the use of those assets can fall within TOB provisions.
4. The holding of shares in a company or of a financial interest in a partnership would not generally come within the scope of VAT and the sale of those investments would not therefore come within TOB provisions.
5. Where a person carries out an economic activity consisting of commercial dealings in shares or partnership investments, the transfer of a portfolio of such investments in conjunction with other assets, such as the human and technical resources to manage that portfolio, will come within TOB provisions.
6. The transfer of a publican's licence, the extinguishing of a publican's licence or the transfer of a taxi licence of itself will not fall within the TOB provisions, whereas if a licence is transferred in conjunction with other assets, such as the business premises and fittings and fixtures, it will come within TOB provisions.
7. The transfer of the stock and fittings of a business in conjunction with the letting of the business premises by the transferor to the transferee falls within TOB provisions [Christel Schriever: CJEU Case C-444/10].

3 Specific rules applying to transfers of immovable goods (property)

The TOB provisions can apply to the transfer to an accountable person of a freehold or freehold equivalent interest in property or the transfer of a “legacy” leasehold interest where that property forms a component of an amalgam of assets being transferred which together are capable of being operated as a business on an independent basis. In considering the use of these provisions it is necessary in each case to examine the totality of assets being transferred. The transfer of a property of itself, whether or not previously used for the purpose of a business, without any additional assets such as plant, machinery, goodwill, stock or an existing tenancy/licencing agreement, which together with the property would be capable of being used to independently carry out a business, would not fall within the TOB provisions.

Specific issues in relation to property transactions must be considered where the transfer of property, including the transfer of a legacy lease, falls within TOB provisions. Guidance for transferors and transferees in respect of these issues has been included by Revenue in publications relating to VAT on property. Of particular relevance are the following:

For the transferor:

- [VAT and the Capital Goods Scheme](#) - See section 7 “Capital Goods Scheme (CGS) – Transfer of Business Relief”.
- [Waiver of Exemption - transitional VAT measures](#); where a waiver of exemption from VAT on short-term lettings is in place and the property being transferred is the only or last property subject to the waiver.
- [Transitional measures applying to legacy leases](#) - See section 8 “What is the VAT treatment of a legacy lease reversion”.

For the transferee:

- [VAT and the Capital Goods Scheme](#) - See section 7 “Capital Goods Scheme (CGS) – Transfer of Business Relief”.
- [Non-Business use of Property](#); where the property is used for or diverted to non-business use or private purposes.
- [Transitional measures applying to legacy leases](#) - See section 8 “What is the VAT treatment of a legacy lease reversion”.

Specific rules applying to transfers of property - Examples

8. A transfer of an immovable good which is subject to:

- a. an existing letting agreement
- b. an agreement to lease, or
- c. a licence to occupy,

comes within TOB provisions, as together those assets are capable of constituting an independent business or undertaking.

9. A transfer of an immovable good, of itself, without any additional assets (such as a letting agreement), which together with the immovable good, would constitute an independent undertaking cannot come within TOB, regardless of how the immovable good had been used prior to its transfer.
10. The transfer of a let property to the tenant will not be regarded as coming within TOB provisions as the only asset being transferred in those circumstances is the property itself and the transfer of a property without any additional assets, which together with the property would constitute an independent undertaking, cannot come within TOB, regardless of how the property had been used prior to its transfer.
11. The transfer of a retail premises together with the stock and fittings used in that retail business falls within the provisions of TOB.
12. The transfer of the assets of a letting business which includes property which is part let, part vacant and part undeveloped, by a single vendor in one transaction to a single purchaser, falls within the TOB provisions. The assets in question must however be shown to be assets of the letting business rather than assets of a separate business such as a development business. For the purposes of determining if a property is an asset of the letting business it will be necessary to show that the property was to be developed with the intention of being used for the purposes of that letting business. The appropriate CGS treatment should be applied to each property transferred.
13. Where a number of persons co-own a property which is let, the transfer by one of the co-owners of an interest in the property, whether to another co-owner or to a third party, is treated as falling within the scope of TOB.
14. Where an option to acquire an immovable good is purchased the VAT treatment of that option will follow the treatment of the transfer of the immovable good to which the option applies so that, if the transfer of the immovable good falls within the TOB provisions so too will the sale of the option to acquire those immovable goods.

To note: In the case of a transfer of property consisting of multiple units, the appropriate CGS treatment should be applied to each unit on an individual basis.

4 Deductibility

Where costs are incurred by the transferor in relation to a transfer of assets to which TOB provisions apply, those costs are considered to be an overhead of the business and entitlement to deductibility is determined on that basis. Where however these overhead costs are shown to have a direct and immediate link to a clearly defined part of the transferor's economic activity, entitlement to deductibility in respect of those costs is determined by reference to whether or not that part of the transferor's economic activity to which the costs are linked gave rise to an entitlement to deductibility. [Abbey National Case C-408/98].

Costs incurred by the transferee in respect of the acquisition of assets to which TOB provisions apply are deductible subject to the normal deductibility rules, i.e. in so far as those costs are linked to the taxable economic activity of the transferee.

A reversionary interest for the purposes of section 93 of the VATCA 2010 is the interest in a property which was retained following the creation of a taxable leasehold interest (a legacy lease) prior to 1st July 2008. The provisions of section 93 are such that:

- the disposal of a reversionary interest is a supply of immovable goods to which VAT is not charged unless the property has been developed by, on behalf of, or to the benefit of the person making the disposal, subsequent to the creation of the legacy lease, and
- VAT on costs incurred in respect of the transfer of a reversionary interest which is not chargeable to VAT is not deductible.

A reversionary interest would be an asset of an economic activity consisting of the development and supply of immovable goods. The transfer of a reversionary interest together with the entitlements to be derived from the associated legacy lease constitutes a transfer of assets coming within TOB provisions. Where the circumstances of the transfer of a reversionary interest are such that it falls within the TOB provisions, VAT incurred, by either the transferor or the transferee, which is directly linked to the transfer of that interest would not be deductible.

Deductibility - Examples

15. A manufacturer transfers a taxable business consisting of a factory building, which is not new, together with various other assets. The VAT incurred by the transferor on services directly related to the transfer of the business is deductible because the services are cost components of the general overheads of a business which was fully taxable prior to its disposal.
16. A person transfers a business which consists of a building that is not new together with various other assets. The activities of the business were VAT exempt. The VAT incurred by the transferor on services directly related to the transfer of those assets is not deductible as the cost of those services form part of the general overheads of a non-deductible business activity.
17. Where ownership of a property, which is not new and is being exploited for the purpose of obtaining rental income, is transferred in circumstances where the TOB provisions apply to the transfer, the transferor's entitlement to deductibility depends on the use to which the property or individual parts of the property were put:
 - a. VAT on services directly related to the transfer is deductible if all the property or all units within the property were subject to taxable lettings.
 - b. VAT on services directly related to the transfer is partially deductible if only some of the units were subject to taxable lettings.
 - c. VAT on services directly related to the transfer is not deductible if none of the units were subject to taxable lettings.
 - d. VAT on services directly related to the transfer of a reversionary interest in a property is not deductible, if that property has not been re-developed since its creation.
 - e. In the case of a transfer of a development where some units are let on a taxable basis, some units are subject to exempt lettings while other units are vacant;
 - i. VAT is deductible in respect of the taxable lettings,
 - ii. VAT is not deductible in respect of exempt lettings, and
 - iii. entitlement to deductibility in respect of the vacant units is determined on a unit by unit basis.

5 Transactions after the transfer of business

Where a transferor of a business issues an invoice to a customer and, subsequent to the transfer of the business, the goods are returned or where a discount or rebate is due to the customer against the price originally charged for the goods, then sections 39 and 67(1)(b) of the VATCA 2010 (together with Regulation 20 of the VAT Regulations 2010) impose an obligation on the transferor to issue a credit note in respect of such transactions.

Revenue may, on a case by case basis, treat as valid a credit note which is issued by the transferee in the above circumstances, where this does not lead to a loss of revenue.

Similarly, where a transferor of a business supplies goods under warranty and, subsequent to the transfer of business, a customer returns goods to the transferee for repair/replacement, the transferee is not entitled to recover input VAT incurred on expenditure relating to the fulfillment of the warranty since this expenditure does not relate to any taxable supplies made by the transferee.

Again, Revenue may, on a case by case basis, accept a claim for deductibility in respect of expenditure incurred in the above circumstances where this does not lead to a loss of revenue.

Where, as part of the transfer of a business to which TOB applies, the transferor of the business transfers debts that, subsequent to the transfer, are determined to be bad debts, the transferee has no entitlement to bad debt relief since he or she is not the accountable person who made the supply. Bad debt relief, subject to the normal conditions, is available in respect of any debts retained by the transferor that are not included in the transfer.

Where, following a transfer of movable goods to which the TOB provisions applied, the transferee:

- a. uses those goods for the purpose of a business activity which does not give an entitlement to a VAT deduction
- b. uses the goods for a purpose other than for the purposes of his or her business,
or
- c. disposes of the goods free of charge,

he or she is deemed to have made a supply of those goods and is liable to account for VAT on that supply. The amount on which VAT is chargeable on such a supply of goods is deemed to be the cost to the transferee of acquiring those goods.

Implications arising from a transfer of immovable goods to which the TOB provisions applied are referred to in paragraph 3 above.

6 Further Information

Enquiries regarding any issue contained in this guidance should be addressed to the Revenue District responsible for your tax affairs. Contact details for all Revenue Districts can be found on the [Contact Details Page](#).

COMPANY NAME

PROPERTY DETAILS

VAT registered number: IE 1234567A

Capital Goods Record - SAMPLE FOR REFERENCE PURPOSES ONLY

Key facts

Date of completion 01-Jul-19
VAT recovered on development €100,000
Number of intervals 20
Accounting year end 31st December

Interval	Reference deduction amount	Base tax amount	Proportion deductible use	Interval deductible amount €	Potential (Repayment)/Payment	End date for interval
1	5,000	5,000	100%	5,000	-	1/7/2019 to 31/12/2019
2	5,000	5,000	-	-	5,000	31-Dec-20
3	5,000	5,000	-	-	5,000	31-Dec-21
4	5,000	5,000	-	-	5,000	31-Dec-22
5	5,000	5,000	-	-	5,000	31-Dec-23
6	5,000	5,000	-	-	5,000	31-Dec-24
7	5,000	5,000	-	-	5,000	31-Dec-25
8	5,000	5,000	-	-	5,000	31-Dec-26
9	5,000	5,000	-	-	5,000	31-Dec-27
10	5,000	5,000	-	-	5,000	31-Dec-28
11	5,000	5,000	-	-	5,000	31-Dec-29
12	5,000	5,000	-	-	5,000	31-Dec-30
13	5,000	5,000	-	-	5,000	31-Dec-31
14	5,000	5,000	-	-	5,000	31-Dec-32
15	5,000	5,000	-	-	5,000	31-Dec-33
16	5,000	5,000	-	-	5,000	31-Dec-34
17	5,000	5,000	-	-	5,000	31-Dec-35
18	5,000	5,000	-	-	5,000	31-Dec-36
19	5,000	5,000	-	-	5,000	31-Dec-37
20	5,000	5,000	-	-	5,000	31-Dec-38



Law Society of Ireland

PRE-CONTRACT VAT ENQUIRIES (February 2014 Edition)

Subject to Contract / Contract Denied

To be answered prior to settling the conditions of sale where VAT is relevant¹ © Law Society of Ireland

Vendor:

Vendor's VAT Registration No:

Purchaser:

Subject Property:

"Occupational Lease" means a lease which is not a freehold equivalent interest as defined in Section 2(1) the VAT Act.

"PCVE" means these Enquiries.

"Tenant's Refurbishment" means capital goods as described in Section 64(7) of the VAT Act.

"VAT Act" means the Value-Added Tax Consolidation Act 2010 as amended from time to time and related VAT regulations.

"TOB" means transfer of a business or part of a business under Section 20(2)(c) the VAT Act.

Reference to "VAT Special Condition 3" means the recommended format of VAT special condition current at the time of sale as referred to in Special Condition 3 of the Law Society's standard General Conditions of Sale.

Private Treaty Sale

Prior to the presentation of the draft Conditions of Sale by Private Treaty, the Purchaser shall complete the Purchaser Statement on the Purchaser's VAT status on Page 3 and issue these PCVE in duplicate to the Vendor. After completing the answers, the Vendor shall complete the drafting of Special Condition 3. The Vendor shall then send the draft Conditions of Sale together with one completed form of these PCVE to the Purchaser.

Auction Sale

When furnishing the Conditions of Sale for an auction sale, the Vendor shall answer these PCVE purely for the purposes of providing VAT information to a prospective Purchaser in relation to the sale of the Subject Property, including a sale which would otherwise be exempt,² on the assumption that the prospective Purchaser is a taxable person who will exercise the joint option to tax the sale but without prejudice to the Purchaser's right to opt, or not to opt, as provided in Special Condition 3.

The enquiry part of these PCVE is divided into 7 Sections:

- Section 1:** Is VAT chargeable on the sale.
- Section 2:** Vendor charges VAT at the appropriate reduced rate.
- Section 3:** Purchaser self accounts for VAT at the appropriate reduced rate.
- Section 4:** Transfer of Business.
- Section 5:** Vendor charges VAT at the standard rate.
- Section 6:** Sale of Let Property.
- Section 7:** Tenant's Refurbishment.

¹ This form is not appropriate for use:

- on the sale of secondhand residential property sold in a private capacity;
 - on the sale of new residential property to a Purchaser as a private person for a VAT inclusive consideration;
 - on the grant of an Occupational Lease; or
 - on a sale where VAT Special Condition 3 will be deleted entirely and the Purchaser does not require to know the VAT history of the Subject Property.
- In any such case Special Condition 3 will be deleted entirely

² "Exempt" includes the situation where the property is not mandatorily taxable but the joint option to tax may be exercised where both parties are taxable persons.

Where appropriate the terms “vendor”/”landlord” and “purchaser”/”tenant” are used interchangeably.

The Vendor should answer these PCVE in the section(s) which are relevant to the sale of the Subject Property.

Where there is insufficient space, the Vendor should provide the answer on an attached sheet or attached sheets.

For each part of the Subject Property which has a separate VAT status, a separate set of answers will be required.

The purposes of these PCVE are to enable the Purchaser’s Solicitor to obtain the information necessary to advise the Purchaser on VAT issues relating to the Subject Property and to assist in the drafting of Special Condition 3. These purposes are stressed as in certain situations these PCVE may require more information to be furnished than is necessary and in other situations more information may actually be required.

To avoid serious difficulties, it is important that Special Condition 3 is drafted to suit the VAT status of the sale and paragraphs which are not relevant are struck out or omitted. A guide (the “Guide”) as to how, using the answers to these PCVE, the Vendor shall settle VAT Special Condition 3 is set out on pages 19 to 25. If VAT Special Condition 3 is to be struck out in its entirety and the Purchaser does not require to know the VAT history of the Subject Property, it is not necessary to use these PCVE.

These PCVE, the Guide and VAT Special Condition 3 are general in nature and may not cover all situations. If in doubt, the advice of a tax expert should be sought.

These PCVE shall be furnished in its entirety without amendment.

Warning: Before answering the PCVE, the Vendor should be satisfied as to the VAT status of the Subject Property and the sale. The answers will be relied upon by the Purchaser.

We certify that these PCVE are those as issued by the Law Society of Ireland (February 2014 Edition) without alteration or omission and that the numbering is unchanged.

Signature of Issuing Solicitor

Date

SUBJECT TO CONTRACT/CONTRACT DENIED

Purchaser Statement on Purchaser's VAT Status

		Please mark as appropriate	Yes	No
1.	The Purchaser is a taxable person as defined in Section 2 of the VAT Act who carries on a business in the State. ³		<input type="checkbox"/>	<input type="checkbox"/>
2.	On the assignment or surrender of a "legacy lease" ⁴ (see VAT Special Conditions 3.2 and 3.6 and enquiries 2.4 and 3.3) the Vendor will require the Purchaser to confirm whether the Vendor or the Purchaser will account for VAT on the assignment or surrender. If the Purchaser answers "No" to this item 2, the Vendor must account for VAT on the assignment or surrender.		<input type="checkbox"/>	<input type="checkbox"/>
	The Purchaser is a person described in Section 95(8)(c) of the VAT Act. ⁵			
3.	The Purchaser is an accountable person ⁶ as defined in Section 5 of the VAT Act. ⁷		<input type="checkbox"/>	<input type="checkbox"/>
4.	Purchaser's VAT registration number:			

Signature of Purchaser (or Purchaser's Agent)

Date

Capacity of Signatory

- 3 In the case of a sale where the joint option to tax (see VAT Special Condition 3.3.1 first paragraph) is to be exercised, the Vendor will require the Purchaser to confirm that the Purchaser is a "taxable person" who carries on a business in the State. Section 1 of the VAT Act defines a "taxable person" as "a person who independently carries on a business in the Community or elsewhere". Where the joint option to tax is exercised, the Purchaser, if a taxable person not already registered for VAT, should register for VAT and account accordingly.
- 4 Legacy leases (see Section 95(1)(b) of the VAT Act) are interests in leasehold 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. For a definition of "Legacy Lease" see section 3.7 of the Revenue VAT on Property Guide.
- 5 The following is a non-exhaustive list of purchasers described in Section 95(8)(c) of the VAT Act who should "self-account":
- (a) an accountable person;
 - (b) a Department of State or Local Authority;
 - (c) a landlord;
 - (d) a bank;
 - (e) an insurance company or insurance broker;
 - (f) An Post;
 - (g) the operator of a national broadcasting or television service; or
 - (h) a transport operation
- and the following is a non exhaustive list of persons who do not "self account":
- (i) a bookmaker;
 - (j) a doctor;
 - (k) a dentist;
 - (l) a private individual;
 - (m) a university, training college or other educational establishment;
 - (n) an undertaker.

When in doubt, a direction should be sought from the Inspector of Taxes.

6 An accountable person is a taxable person who engages in the supply within the State of taxable goods or services.

7 Required only if the transaction is a transfer of a business under Section 20(2)(c) of the VAT Act.

SECTION 1: IS VAT CHARGEABLE ON THE SALE

Please mark as appropriate		Yes	No
1.	IS VAT CHARGEABLE ON THE SALE?	<input type="checkbox"/>	<input type="checkbox"/>
	If the answer to enquiry 1 is "Yes", confirm that the Vendor is a taxable person under Section 2 of the VAT Act for the purposes of the sale of the Subject Property.	<input type="checkbox"/>	<input type="checkbox"/>
	If "Yes", please state Vendor's VAT Number and proceed to Section 2.		
1.1	If the answer to enquiry 1. is "No", please indicate by a "Yes" or "No" answer which of the following categories of sale applies:		
	(a) The sale of a freehold/freehold equivalent interest which: (i) is not a sale as part of a TOB; and (ii) is not a sale where the Vendor is requesting the Purchaser to exercise the joint option to tax.	<input type="checkbox"/>	<input type="checkbox"/>
	(b) The assignment or surrender of an Occupational Lease: (i) which is not a sale as part of a TOB; and (ii) which is not a supply of a good or a service where VAT is chargeable on the sale.	<input type="checkbox"/>	<input type="checkbox"/>
	(c) The sale as part of a TOB qualifying for non application of VAT under the VAT Act Section 20(2)(c).	<input type="checkbox"/>	<input type="checkbox"/>
	(d) Other category of sale on which VAT will not be chargeable either as the supply of a good or a service.	<input type="checkbox"/>	<input type="checkbox"/>
1.2	If the answer to either of enquiries 1.1(a) or (d) is "Yes", confirm that VAT Special Condition 3 will be deleted in its entirety. (If Vendor has answered "Yes" to either of such enquiries and agrees that VAT Special Condition 3 is to be deleted, answer enquiry 1.6 and related enquiries. No further answers are required in these PCVE but the right is reserved to make further enquiries to investigate the VAT history of the Subject Property.		
1.3	If the answer to enquiry 1.2 is "No", answer enquiry 1.6 and related enquiries and enquiries 2.2 and 2.3 and explain in writing on an attached sheet how the Vendor proposes to deal with VAT Special Condition 3 of the Law Society General Conditions of Sale. ⁸ No further answers to these PCVE are required but the right is reserved to make further enquires to investigate the VAT history of the Subject Property.		
1.4	If the answer to enquiry 1.1(b) is "Yes", answer enquiry 1.6 and related enquiries and Section 7 and give details on an attached sheet to satisfy the Purchaser as to why VAT is not chargeable. No further answers to these PCVE are required but the right is reserved to make further enquires to investigate the VAT history of the Subject Property.		
1.5	If the answer to enquiry 1.1(c) is "Yes", answer enquiry 1.6 and related enquiries and proceed to Section 4 (Transfer of Business).		
1.6	Let (or previously let within 20 years) Subject Property		
1.6.1	Is any part of the Subject Property let or sublet?	<input type="checkbox"/>	<input type="checkbox"/>
1.6.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>
1.6.3	If the answer to either enquiry 1.6.1 or 1.6.2 is "Yes", please also answer Section 6.		

⁸ If it is the case that in addition to the purchase price, under VAT Special Condition 3.4 the Vendor will charge the Purchaser an amount equal to the capital goods adjustment which the Vendor will suffer as a result of the sale of the Subject Property, give details to satisfy the Purchaser as to how this amount is calculated together with copies of relevant capital goods records.

SECTION 2: VENDOR CHARGES VAT AT THE APPROPRIATE REDUCED RATE

Please mark as appropriate		Yes	No
2.	WILL THE VENDOR CHARGE VAT AT THE APPROPRIATE REDUCED RATE?⁹	<input type="checkbox"/>	<input type="checkbox"/>
If the answer to enquiry 2 is “No”, proceed to Section 3.			
2.1	If the answer to enquiry 2 is “Yes” indicate by a “Yes” or “No” answer which one of the following categories of sale at (a) to (d) applies:		
	(a) Sale of partially developed property. ¹⁰	<input type="checkbox"/>	<input type="checkbox"/>
	(b) Sale of property coupled with building. ¹¹	<input type="checkbox"/>	<input type="checkbox"/>
	(c) Sale of a completed “new or nearly new” freehold/freehold equivalent interest. ¹²	<input type="checkbox"/>	<input type="checkbox"/>
	(d) Assignment or surrender of a legacy lease to a person not specified in Section 95(8)(c) of the VAT Act. ¹³	<input type="checkbox"/>	<input type="checkbox"/>
	If the answer to either of enquiries 2.1 (a) or (c) is “Yes”, answer enquiries 2.2, 2.3 and 2.5. No further answers are required.		
	If the answer to enquiry 2.1(b) is “Yes”, answer enquiries 2.2 and 2.5. No further answers are required.		
	If the answer to enquiry 2.1(d) is “Yes”, answer enquiries 2.4 and 2.5. No further answers are required.		
2.2	Please furnish now a draft VAT invoice showing the amount of VAT chargeable on the sale of the Subject Property.		
2.3	Development¹⁴		
2.3.1	Please state the date (irrespective of whether or not such date was before, on or after 1 July 2008) when the Subject Property was last developed to such an extent that such development renders the sale of the Subject Property a taxable supply of immovable goods in respect of which the development has been completed. ¹⁵		
2.3.2	Please provide a description of such development on an attached sheet . Please also state:		
	(i) the cost of the development	€ _____	
	(ii) the total tax incurred; and	€ _____	
	(iii) the non deductible amount ¹⁶	€ _____	
	and furnish copies of the development contract or contracts		

9 Sections 3(1)(a), 94(5) and 95(3) or (6) of the VAT Act. Note if the Vendor will not charge VAT but either the Purchaser will be chargeable to VAT or the Vendor intends that the Purchaser will be so chargeable, the appropriate answer is “No”.

10 Partially developed property refers to property which has been developed but has not been completed within the meaning of Section 94(1) of the VAT Act and is not excluded by Section 94(2)(d) of the VAT Act (20 year look back period). See Note 14 below for definition of “development”.

11 Section 94(3) of the VAT Act.

12 This includes transitional properties held on 1 July 2008 by a taxable person where the Vendor had the right to deduct VAT on the acquisition or development. The supply of these properties can be taxable under the VAT Act as a supply of immovable goods without reference to the exercise of any joint option. This enquiry can only be answered in the affirmative where development (other than minor development) to a non residential property has been completed within 5 years prior to completion of the sale and the property has not been occupied for at least 2 years.

13 See footnote 5.

14 Section 2(1) of the VAT Act defines “development” 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 a materially altered use. This does not include minor development to a building which does not adapt the building for a materially altered use and the value of the works do not exceed 25% of the value of the property at the time of sale.

15 Section 94(1) of the VAT Act.

16 Section 63(1) of the VAT Act.

Please mark as appropriate **Yes** **No**

2.3.3	If more than one such development has taken place which renders the sale of the Subject Property taxable, answer enquiry 2.3.2 for each such development on attached sheet .		
2.3.4	2.3.4 Was any such development a refurbishment ¹⁷ ? If the answer is "Yes", please provide details on an attached sheet .	<input type="checkbox"/>	<input type="checkbox"/>
Completed¹⁸			
2.3.5	If such development of the Subject Property was completed in stages please describe on an attached sheet the stages, and specify the date of completion for each stage and the relevant costs.		
2.3.6	Produce documentary evidence of the date(s) of completion of such development(s) and if relevant, the stages.		
Occupied¹⁹			
2.3.7	Has the Subject Property been occupied in its entirety in accordance with appropriate planning permission since the date of such development?	<input type="checkbox"/>	<input type="checkbox"/>
2.3.8	If the answer to enquiry 2.3.7 is "No", give particulars on an attached sheet of: (a) dates, periods and other details of occupation of the Subject Property since such completion; and (b) the authorised use under any planning permission in respect of the Subject Property.		
2.3.9	Since completion of the most recent development which for the purposes of the VAT Act causes the sale of the Subject Property to be taxable as the supply of immovable goods, was every part of the Subject Property occupied for the purposes of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>
2.3.10	If the answer to enquiry 2.3.9 is "Yes", please provide details on an attached sheet .		
Sales Since Completion of Development²⁰			
2.3.11	Since the completion of the most recent development of the Subject Property which for the purposes of the VAT Act causes the sale to be taxable as the supply of immovable goods, has there been a sale or sales of the Subject Property?	<input type="checkbox"/>	<input type="checkbox"/>
2.3.12	If the answer to enquiry 2.3.11 is "Yes", give details on an attached sheet of all sales for the period since the later of the most recent development or 5 years last past and include information on: (a) The VAT charged on each such sale; and (b) Whether the parties were "connected persons" within the meaning of Section 97(3) of the VAT Act.		
2.4	Legacy Lease²¹ – Vendor Accountable for VAT		
2.4.1	Please identify by a "Yes" or "No" answer the type of sale of the Subject Property by reference to the following:		
	(a) assignment/surrender of a legacy lease held by the original lessee.	<input type="checkbox"/>	<input type="checkbox"/>
	(b) assignment/surrender of a legacy lease acquired by the Vendor by assignment prior to 1 July 2008.	<input type="checkbox"/>	<input type="checkbox"/>
	(c) assignment/surrender of a legacy lease acquired by the Vendor by the first assignment made after 1 July 2008.	<input type="checkbox"/>	<input type="checkbox"/>

17 Section 63(1) of the VAT Act.

18 Section 94(1) of the VAT Act.

19 "Occupied" means occupied and fully in use following completion where that use is one for which planning permission for the development of the property was granted and where the Subject Property is let, occupied and fully in use by the tenant.

20 "Sale" or, in the term used in the VAT Act, "supply", means "the transfer in substance of (a) the right to dispose of immovable property as owner or (b) the right to transfer immovable goods". (See the VAT Act Section 19(2)).

21 See footnote 4.

Please mark as appropriate		Yes	No
	(d) assignment/surrender of a lease acquired by the Vendor as the successor in title of a person who acquired the legacy lease in the manner described in (c) above.	<input type="checkbox"/>	<input type="checkbox"/>
2.4.2	Was the Vendor entitled or deemed to have been entitled to deduct any VAT on the acquisition or development of the Subject Property?	<input type="checkbox"/>	<input type="checkbox"/>
2.4.3	If the answer to enquiry 2.4.2 is "Yes", please provide now: (a) draft document specified by Section 95(9)(a) of the VAT Act containing details of the VAT due on the sale of the Subject Property and the number of intervals remaining in the adjustment period; (b) evidence to verify the "total tax incurred"; and (c) evidence to confirm the number of intervals in the adjustment period.		
2.4.4	If the answer to enquiry 2.4.2 is "No", is the Vendor requesting the Purchaser to co-operate in exercising the joint option to tax the sale in accordance with Section 94(5) as authorised by Section 95(7)(b) of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>
2.4.5	If the answer to enquiry 2.4.4 is "Yes", please set out the quantum of the VAT that may be recovered by the Vendor as a result of the exercise of such joint option	€ _____	
2.4.6	Without prejudice to the Purchaser's position in respect of the response to enquiry 2.4.4 would the Vendor agree not to exercise the joint option to tax and on what terms?	<input type="checkbox"/>	<input type="checkbox"/>
2.4.7	If the answer to enquiry 2.4.4 is "Yes", the Vendor is a taxable person but is not registered for VAT and the Purchaser is willing to co-operate in exercising the joint option to tax, please confirm that the Vendor will be so registered before completion and will on or prior to completion supply evidence of such registration.	<input type="checkbox"/>	<input type="checkbox"/>
2.5	Let (or previously let within 20 years) Subject Property		
2.5.1	Is any part of the Subject Property let or sublet?	<input type="checkbox"/>	<input type="checkbox"/>
2.5.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>
2.5.3	If the answer to either enquiry 2.5.1 or 2.5.2 is "Yes", please also answer Section 6.		

SECTION 3: PURCHASER SELF ACCOUNTS FOR VAT AT THE APPROPRIATE REDUCED RATE

Please mark as appropriate		Yes	No
3.	DOES THE VENDOR INTEND THAT THE PURCHASER WILL SELF ACCOUNT FOR VAT AT THE APPROPRIATE REDUCED RATE²²? If the answer to enquiry 3 is “No”, proceed to Section 4.	<input type="checkbox"/>	<input type="checkbox"/>
3.1	If the answer to enquiry 3 is “Yes”, indicate by a “Yes” or “No” answer which of the categories of sale at (a) or (b) applies:		
	(a) Sale of freehold/freehold equivalent interest where the Vendor is requesting that the joint option to tax the Subject Property shall be exercised. ²³	<input type="checkbox"/>	<input type="checkbox"/>
	(b) Assignment or surrender of legacy lease ²⁴ to a Purchaser who is a person specified in Section 95(8)(c) of the VAT Act. ²⁵	<input type="checkbox"/>	<input type="checkbox"/>
	If the answer to enquiry 3.1(a) is “Yes”, answer enquiries 3.2 and 3.4. No further answers in these PCVE are required but the right is reserved to make further enquiries to investigate the VAT history of the Subject Property.		
	If the answer to enquiry 3.1(b) is “Yes”, answer enquiries 3.3 and 3.4. No further answers are required in these PCVE but the right is reserved to make further enquiries to investigate the VAT history of the Subject Property.		
3.2	Development²⁶/Completion²⁷		
3.2.1	Please:		
	(a) state the date (irrespective of whether or not such date was before, on or after 1 July 2008) when the Subject Property was last developed to such an extent that any supply of the Subject Property immediately following the completion of that development was or would have been treated under the VAT Act as in force on 1 July 2008 as a taxable supply of immovable goods in respect of which the development had been completed (as defined in Section 94(1)) of the VAT Act);		
	(b) provide a description of such development on an attached sheet giving the following information:		
	(i) the cost of the development;	€	_____
	(ii) the total tax incurred; and	€	_____
	(iii) the non-deductible amount, ²⁸ and	€	_____
	(c) furnish copies of the development contract or contracts		

²² Sections 94(5), 95(5) or 95(7)(b) of the VAT Act.

²³ This includes:

(a) transitional freehold/freehold equivalent property held prior to 1 July 2008 which is not new or nearly new and where the Vendor had the right to deduct VAT; and

(b) transitional freehold/freehold equivalent property held prior to 1 July 2008 where the Vendor had no right to deduct VAT regardless of whether the property is new or nearly new but the Vendor requires the joint option to tax to be exercised in a sale to a taxable person.

²⁴ See footnote 4.

²⁵ See reply 2 of the Purchaser Statement on Purchaser's VAT status at page 3. See also footnote 5.

²⁶ Section 2(1) of the VAT Act defines “development” 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 a materially altered use. This does not include minor development to a building which does not adapt the building for a materially altered use and the value of the works do not exceed 25% of the value of the property at the time of sale.

²⁷ Section 94(1) of the VAT Act.

²⁸ Section 63(1) of the VAT Act.

Please mark as appropriate **Yes** **No**

		Yes	No
Joint Option to Tax²⁹			
3.2.2	If the Vendor is requesting that the Purchaser shall agree to jointly opt to have the sale chargeable to VAT in accordance with Section 94(5) of the VAT Act, please set out the quantum of the VAT that may be recovered by the Vendor as a result of the exercise of such option if the sale of the Subject Property is completed on the closing date. ³⁰	€ _____	
3.2.3	If the Vendor is requesting that the Purchaser shall agree to jointly opt to have the sale chargeable to VAT in accordance with Section 94(5) of the VAT Act, please state the amount of the VAT repayment under the Capital Goods Scheme which the Vendor will be obliged to repay and, if applicable, the amount of any VAT reclaim which the Vendor will forego, if the sale of the Subject Property is completed on the closing date and the joint option to tax the sale is not exercised.	€ _____ VAT repayable € _____ Reclaim foregone	
3.2.4	Without prejudice to the Purchaser's right not to participate in the exercise of the joint option to tax, will the Vendor agree not to request the exercise of the joint option to tax?	<input type="checkbox"/>	<input type="checkbox"/>
	If so, specify the amount (with breakdown for each capital good on an attached sheet if necessary) required to compensate the Vendor for any capital goods adjustment which will apply for the Vendor and state the additional consideration which the Vendor would propose charging the Purchaser for not exercising such joint option.	€ _____ Additional consideration	
3.2.5	If the Vendor intends that the joint option will be exercised, state how the Vendor proposes that this exercise will be documented for record purposes?		
3.3	Assignment/Surrender of Legacy Lease³¹ – Purchaser Self Accounts for VAT Vendor should only answer this enquiry if the Purchaser answered “Yes” to the Purchaser Statement on VAT status number 2 at page 3.³²		
3.3.1	Please identify by a “Yes” or “No” answer the type of sale by reference to the following:		
	(a) assignment/surrender of a legacy lease held by the original lessee.	<input type="checkbox"/>	<input type="checkbox"/>
	(b) assignment/surrender of a legacy lease acquired by the Vendor by assignment prior to 1 July 2008.	<input type="checkbox"/>	<input type="checkbox"/>
	(c) assignment/surrender of a legacy lease acquired by the Vendor by the first assignment made after 1 July 2008	<input type="checkbox"/>	<input type="checkbox"/>
	(d) assignment/surrender of a lease acquired by the Vendor as the successor in title of a person who acquired the legacy lease in the manner described in (c) above.	<input type="checkbox"/>	<input type="checkbox"/>
3.3.2	Was the Vendor entitled or deemed to have been entitled to deduct any VAT on the acquisition or development of the Subject Property?	<input type="checkbox"/>	<input type="checkbox"/>
3.3.3	If the answer to enquiry 3.3.2 is “Yes”, please provide now: (a) draft document specified by Section 95(9)(a) of the VAT Act containing details of the VAT due on the sale of the Subject Property and the number of intervals remaining in the adjustment period; (b) evidence to verify the “total tax incurred”; and (c) evidence to confirm the number of intervals in the adjustment period.		
3.3.4	If the answer to enquiry 3.3.2 is “No”, is the Vendor requesting the Purchaser to co-operate in exercising the joint option to tax the sale in accordance with Section 94(5) as conferred by Section 95(7)(b) of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>

29 The joint option to tax under Section 94(5) of the VAT Act can only be exercised where the Vendor and the Purchaser are taxable persons.

30 This is only exercisable where the Vendor is a taxable person.

31 See footnote 4.

32 Sale of legacy lease. Vendor not entitled to deduct VAT on acquisition or development of the Subject Property.

Please mark as appropriate

Yes **No**

3.3.5	If the answer to enquiry 3.3.4 is "Yes", please set out the quantum of the VAT that may be recovered by the Vendor as a result of the exercise of such option.	€ _____	
3.3.6	Without prejudice to the Purchaser's position in respect of the response to enquiry 3.3.4, would the Vendor agree not to exercise the joint option to tax?	<input type="checkbox"/>	<input type="checkbox"/>
	If the answer is "yes", please set out the terms on an attached sheet .		
3.3.7	If the answer to enquiry 3.3.4 is "Yes", the Vendor is a taxable person but is not registered for VAT and the Purchaser is willing to exercise the joint option to tax, please confirm that the Vendor will be so registered before completion and will on or prior to completion supply evidence of such registration.	<input type="checkbox"/>	<input type="checkbox"/>
3.4	Let (or previously let within 20 years) Subject Property		
3.4.1	Is any part of the Subject Property let or sublet?	<input type="checkbox"/>	<input type="checkbox"/>
3.4.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>
3.4.2	If the answer to either enquiry 3.4.1 or 3.4.2 is "Yes", please also answer Section 6.		

SECTION 4: TRANSFER OF BUSINESS (TOB)³³

		Please mark as appropriate	Yes	No
4.	IS THE SALE PART OF A TOB?		<input type="checkbox"/>	<input type="checkbox"/>
4.1	If the answer to enquiry 4 is "Yes", indicate by a "Yes" or "No" answer which of the following categories of sale at (a) to (d) applies:			
	(a) Sale of partially developed property. If the answer to (a) is "Yes", please answer enquiries 4.2 and 4.6.		<input type="checkbox"/>	<input type="checkbox"/>
	(b) Sale of new or nearly new freehold/freehold equivalent interest. ³⁴ If the answer to (b) is "Yes", please answer enquiries 4.3 and 4.6.		<input type="checkbox"/>	<input type="checkbox"/>
	(c) Sale of freehold/freehold equivalent interest in the Subject Property under TOB rules which would otherwise be exempt with a joint option to tax the Subject Property. ³⁵ If the answer to (c) is "Yes", please answer enquiries 4.4 and 4.6.		<input type="checkbox"/>	<input type="checkbox"/>
	(d) Assignment or surrender of legacy lease. If the answer to (d) is "Yes", please answer enquiries 4.5 and 4.6.		<input type="checkbox"/>	<input type="checkbox"/>
4.2	Partially Developed Property			
4.2.1	Describe on an attached sheet the development or, if there is more than one development, each of the developments of the Subject Property relevant for VAT on the sale.			
4.2.2	Please state the amount on which VAT would be chargeable on the sale of the Subject Property in the absence of TOB relief.		€ _____	
4.3	New or Nearly New Property			
	(a) Development³⁶			
4.3.1	Please state the date (irrespective of whether or not such date was before, on or after 1 July 2008) when the Subject Property was last developed to such an extent that in the absence of TOB Relief such development renders the sale of the Subject Property a taxable supply of immovable goods in respect of which the development has been completed. ³⁷			
4.3.2	Please provide a description of such development on an attached sheet . Please also state:			
	(i) the cost of the development;		€ _____	
	(ii) the total tax incurred; and		€ _____	
	(iii) the non-deductible amount. ³⁸		€ _____	
	and furnish copies of the development contract or contracts.			
4.3.3	If more than one such development has taken place which renders the sale of the Subject Property taxable, answer enquiry 4.3.2 for each such development on an attached sheet .			

33 Section 20(2)(c) of the VAT Act.

34 This includes transitional properties held on 1 July 2008 by a taxable person where the Vendor had the right to deduct VAT on the acquisition or development. The supply of these properties is taxable under the VAT Act as a supply of immovable goods without reference to the exercise of any joint option. This enquiry can only be answered in the affirmative where development (other than minor development) to a non residential property has been completed within 5 years prior to completion of the sale and the property has not been occupied for at least 2 years.

35 This includes:
(a) a transitional freehold/freehold equivalent property held from prior to 1 July 2008 which is not new or nearly new and where the Vendor had the right to deduct VAT; and
(b) a transitional freehold/freehold equivalent property held prior to 1 July 2008 where the Vendor is a taxable person and had no right to deduct VAT on the acquisition or development regardless of whether the property is new or nearly new.

36 Section 2(1) of the VAT Act defines "development" 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 a materially altered use. This does not include minor development to a building which does not adapt the building for a materially altered use and the value of the works do not exceed 25% of the value of the property at the time of the sale.

37 Section 94(1) of the VAT Act.

38 Section 63(1) of the VAT Act.

Please mark as appropriate **Yes** **No**

4.3.4	Was any such development a refurbishment ³⁹ ? If the answer is "Yes", please provide details on an attached sheet .	<input type="checkbox"/>	<input type="checkbox"/>
(b) Completed⁴⁰			
4.3.5	If such development of the Subject Property was completed in stages please describe on an attached sheet the stages, and specify the date of completion for each stage and the relevant costs.		
4.3.6	Produce documentary evidence of the date(s) of completion of such development(s) and if relevant, the stages.		
(c) Occupied⁴¹			
4.3.7	Has the Subject Property been occupied in its entirety in accordance with appropriate planning permission since the date of such development?	<input type="checkbox"/>	<input type="checkbox"/>
4.3.8	If the answer to enquiry 4.3.7 is "No", give particulars on an attached sheet of: (a) dates, periods and other details of occupation and vacancy of the Subject Property since such completion; and (b) the authorised use under any planning permission in respect of the Subject Property.		
4.3.9	Since completion of the most recent development which for the purposes of the VAT Act causes the sale of the Subject Property (in the absence of TOB relief) to be taxable as the supply of immovable goods, was every part of the Subject Property occupied for the purposes of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>
4.3.10	Please provide details on an attached sheet of all occupations and non-occupations of the subject property relevant for the purposes of enquiry 4.3.9.		
(d) Sales⁴²			
4.3.11	Since the completion of the most recent development of the Subject Property which for the purposes of the VAT Act causes the sale to be taxable as the supply of immovable goods, has there been a sale or sales of the Subject Property?	<input type="checkbox"/>	<input type="checkbox"/>
4.3.12	If the answer to enquiry 4.3.11 is "Yes", please provide details on an attached sheet of each sale.		
4.3.13	Since the date of such development(s), has there been a sale or sales of the Subject Property to a "connected person" or "connected persons" within the meaning of Section 97(3) of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>
4.3.14	If the answer to enquiry 4.3.13 is "Yes", please provide details on an attached sheet of each such sale.		

39 Section 63(1) of the VAT Act.

40 Section 94(1) of the VAT Act.

41 "Occupied" means occupied and fully in use following completion where that use is one for which planning permission for the development of the property was granted and where the Subject Property is let, occupied and fully in use by the tenant.

42 "Sale" in this section means "the transfer in substance of the right to dispose of immovable property as owner or the transfer in substance of the right to transfer immovable goods". (See VAT Act Section 19(2)).

Please mark as appropriate **Yes** **No**

4.4	Freehold/Freehold Equivalent Interest which is no longer new or nearly new		
4.4.1	Please state the date (irrespective of whether or not such date was before, on or after 1 July 2008) when the Subject Property was last developed to such an extent that any supply of the Subject Property immediately following that development was or would have been treated under the VAT Act as in force on 1 July 2008 as a taxable supply of immovable goods in respect of which the development had been completed (as defined in Section 94(1)) of the VAT Act.		
4.4.2	Please provide a description of such development on an attached sheet . Please also state: (i) the cost of the development; (ii) the total tax incurred; and (iii) the non-deductible amount ⁴³ , and furnish copies of the development contract or contracts.	€ _____ € _____ € _____	
4.4.3	If more than one such development has taken place which renders the sale of the Subject Property taxable, give details of each of them on an attached sheet .		
4.4.4	Was any such development a refurbishment ⁴⁴ ? If the answer is "Yes", please provide details on an attached sheet .	<input type="checkbox"/>	<input type="checkbox"/>
4.4.5	If such development of the Subject Property was completed in stages, please describe the stages on an attached sheet , and specify the date of completion for each stage and the relevant costs.		
4.4.6	Since the date given in the answer to enquiry 4.4.1 above, has the Subject Property or any part of it been developed or undergone works to effect or materially alter the use? If so, please provide details on an attached sheet .	<input type="checkbox"/>	<input type="checkbox"/>
	Other Capital Goods		
4.4.7	Please produce now a copy of the capital goods record written up to date for each development of the Subject Property and confirm that capital goods records for the Subject Property written up to date of completion will be handed over on completion.		

43 Section 63(1) of the VAT Act.

44 Section 63(1) of the VAT Act.

Please mark as appropriate **Yes** **No**

4.5	Assignment/Surrender of Legacy Lease⁴⁵		
4.5.1	Was the Vendor entitled to deduct any of the VAT incurred on the acquisition or development of the lease?	<input type="checkbox"/>	<input type="checkbox"/>
4.5.2	State the amount on which VAT would be chargeable on the sale of the Subject Property in the absence of TOB relief.	€ _____	
4.5.3	Produce a copy of the capital goods record written up to date for the Subject Property and confirm that a capital goods record for the Subject Property written up to date of completion will be handed over on completion.		
4.6	Let (or previously let within 20 years) Property		
4.6.1	Is any part of the Subject Property let or sublet?	<input type="checkbox"/>	<input type="checkbox"/>
4.6.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>
4.6.3	If the answer to either enquiry 4.6.1 or 4.6.2 is "Yes", please also answer Section 6.		

⁴⁵ See footnote 4.

SECTION 5: VENDOR CHARGES VAT AT THE STANDARD RATE

		Please mark as appropriate	Yes	No
5	WILL THE VENDOR CHARGE VAT AT THE STANDARD RATE?		<input type="checkbox"/>	<input type="checkbox"/>
5.1	If the answer to enquiry 5.1 is "Yes", please indicate by a "Yes" answer which one of the following categories of transaction (a) to (d) applies:-			
	(a) The sale is a surrender for a premium payable by the purchaser of an occupational lease created prior to 1 July 2008 for a term of less than 10 years where the landlord's waiver of exemption under section 7 of the VAT Act 1972 applies; or		<input type="checkbox"/>	<input type="checkbox"/>
	(b) The sale is a surrender for a premium payable by the purchaser of an occupational lease created after 30 June 2008 where the landlord's option to tax is in place; or		<input type="checkbox"/>	<input type="checkbox"/>
	(c) The sale is an assignment for a premium payable by the purchaser of an occupational lease created prior to 1 July 2008 for a term of less than 10 years where the landlord's waiver of exemption from VAT applies; or		<input type="checkbox"/>	<input type="checkbox"/>
	(d) The sale is an assignment for a premium payable by the purchaser of an occupational lease created after 30 June 2008 whether or not the landlord's option to tax is in place.		<input type="checkbox"/>	<input type="checkbox"/>
5.2	Please furnish now a draft VAT invoice showing the amount of VAT chargeable.			
5.3	Is the Subject Property assigned or surrendered the subject of a Tenant's Refurbishment?		<input type="checkbox"/>	<input type="checkbox"/>
5.4	If the answer to enquiry 5.3 is "Yes", please also answer Section 7.			
5.5	Let (or previously let within 20 years) Property			
5.5.1	Is any part of the Subject Property let or sublet?		<input type="checkbox"/>	<input type="checkbox"/>
5.5.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?		<input type="checkbox"/>	<input type="checkbox"/>
5.5.3	If the answer to either enquiry 5.5.1 or 5.5.2 is "Yes" please answer Section 6.			

SECTION 6⁴⁶ : SALE OF LET OR SUBLET PROPERTY (INCLUDES A PROPERTY WHICH WAS WITHIN THE LAST 20 YEARS LET OR SUBLET AND THE SUBJECT OF A WAIVER OF EXEMPTION UNDER SECTION 96 OF THE VAT ACT)

For each lease or sublease please complete a separate answer sheet for the following section.

		Please mark as appropriate	
		Yes	No
6.	IS THE SUBJECT PROPERTY ITSELF THE SUBJECT OF ANY LEASE OR SUBLEASE OR SINCE ITS ACQUISITION, WAS IT LET AT ANY TIME WITHIN THE LAST 20 YEARS?	<input type="checkbox"/>	<input type="checkbox"/>
If the answer to enquiry 6 is "No", proceed to Section 7.			
6.1	If the answer to enquiry 6 is "Yes", please confirm in respect of the lease or sublease:-		
	(a) the name and address of the [current] lessee/sublessee;		
	(b) the business carried on by the [current] lessee/sublessee;		
	(c) the date of creation of the lease or sublease;		
	(d) the date of expiry of the leasehold term.		
6.2.1 (a)	Was VAT charged or deemed to have been charged on the grant of the lease?;	<input type="checkbox"/>	<input type="checkbox"/>
(b)	Was VAT charged on the rent?	<input type="checkbox"/>	<input type="checkbox"/>
If the answer to both of these enquiries is "No", proceed to Section 7.			
6.2.2	If the answer to either of enquiries 6.2.1 (a) or (b) is "Yes", please confirm by a "Yes" or "No" answer which one of the three following descriptions applies to the lease or the sublease		
	The lease or sublease in question is:-		
(a)	A legacy lease ⁴⁷ ; If the answer is "Yes" please answer enquiries 6.3 and 6.6.	<input type="checkbox"/>	<input type="checkbox"/>
(b)	A lease subject to Vendor's waiver of exemption; If the answer is "Yes" please answer enquiries 6.4 and 6.6.	<input type="checkbox"/>	<input type="checkbox"/>
(c)	A lease subject to Vendor's option to tax. If the answer is "Yes" please answer enquiries 6.5 and 6.6	<input type="checkbox"/>	<input type="checkbox"/>
6.3	Legacy Lease		
6.3.1	State the VAT charged (if any) or which would have been charged except for the operation of Section 4A of the Value Added Tax Act 1972 on the creation of the lease.	€ _____	
6.3.2	State the expiration date in respect of the lease of the period specified in Section 95(5) of the VAT Act.		
6.3.3	Please provide now a copy of the relevant Section 4B Certificate issued under Section 4A of the Value Added Tax Act 1972.		

⁴⁶ The purpose of this section is to clarify the application of VAT to a let or previously let or sublet subject property.

⁴⁷ See footnote 4.

		Please mark as appropriate	
		Yes	No
6.4	Waiver of Exemption		
6.4.1	Please provide now copy documents to show that the tenant is liable to pay VAT in addition to the rent under the terms of the lease.		
6.4.2	Does the sale of the Subject Property result in a cancellation of a waiver of exemption made by the Vendor under Section 96 of the VAT Act? ⁴⁸	<input type="checkbox"/>	<input type="checkbox"/>
6.4.3	Was any such waiver of exemption previously cancelled in respect of any letting of the Subject Property?	<input type="checkbox"/>	<input type="checkbox"/>
6.4.4	Does the fact that any such cancellation of a waiver has occurred or will occur impact on the sale?	<input type="checkbox"/>	<input type="checkbox"/>
6.4.5	If the answer to enquiry 6.4.2, 6.4.3 or 6.4.4 is "Yes", please give details on an <u>attached sheet.</u>		
6.5	Option to Tax		
6.5.1	Is the tenant liable to pay VAT in addition to the rent under the terms of the lease?	<input type="checkbox"/>	<input type="checkbox"/>
6.5.2	Is the landlord's option to tax still in place in accordance with Section 97 of the VAT Act?	<input type="checkbox"/>	<input type="checkbox"/>
6.5.3	Please provide copy documentation showing that the landlord for the time being is entitled to exercise the landlord's option to tax in respect of the lease and that the landlord's option to tax has been exercised.		
6.6	Refurbishment		
6.6.1	Has any tenant of any such let property carried out any refurbishment on the let property?	<input type="checkbox"/>	<input type="checkbox"/>
6.6.2	If the answer to enquiry 6.6.1 is "Yes", has the landlord agreed to accept responsibility on any surrender of the Lease for any Tenant's Refurbishment?	<input type="checkbox"/>	<input type="checkbox"/>
	If so please give details of such 'tenant's' refurbishment on an <u>attached sheet.</u>		

48 Vendor should be aware that the cancellation of a waiver under Section 96 of the VAT Act may have an impact on the Vendor's VAT position in relation to the Subject Property.

SECTION 7: TENANT'S REFURBISHMENT⁴⁹

		Please mark as appropriate	Yes	No
7	HAS THE VENDOR OR PREDECESSOR IN TITLE, BEING A TENANT OF THE SUBJECT PROPERTY UNDER AN OCCUPATIONAL LEASE, CARRIED OUT A TENANT'S REFURBISHMENT OF THE SUBJECT PROPERTY OR TAKEN RESPONSIBILITY FOR A TENANT'S REFURBISHMENT?		<input type="checkbox"/>	<input type="checkbox"/>
7.1	If the answer to enquiry 7 is "Yes", confirm that the Vendor was entitled to deduct all VAT incurred in relation to the/each Tenant's Refurbishment			
7.2	Is the Vendor requesting that the Purchaser agree to be responsible for all obligations in respect of each Tenant's Refurbishment?		<input type="checkbox"/>	<input type="checkbox"/>
7.2.1	If the Vendor is requesting that the Purchaser agree to be responsible for all obligations in respect of each Tenant's Refurbishment, please set out the quantum of the VAT which would otherwise have been payable to Revenue by the Vendor pursuant to Section 64(7)(a) of the VAT Act in the absence of the Purchaser so agreeing.			€ _____
7.2.2	If the answer to enquiry 7.2 above is "Yes", without prejudice to the Purchaser's position on an attached sheet please:- (a) describe each Tenant's Refurbishment; (b) specify the adjustment period of each Tenant's Refurbishment; and in respect of each Tenant's Refurbishment, provide a copy of the capital goods record and state the form of the written agreement to be entered into by the Purchaser to enable Section 64(7) of the VAT Act to apply on the sale.			

Dated _____ 20____

Dated _____ 20____

Vendor/Solicitors for Vendor

Purchaser/Solicitors for Purchaser

⁴⁹ This Section need only be completed where the Subject Property is an interest under an Occupational Lease. A tenant under an occupational lease who was not entitled to deduct all of the VAT incurred on the acquisition or development of a refurbishment is NOT entitled to transfer responsibility to an Assignee or Surrenderee.

GUIDE TO COMPLETING VAT SPECIAL CONDITION 3 (FEBRUARY 2014 EDITION)

PLEASE NOTE THAT WHEN COMPLETING A CONTRACT FOR SALE IT IS NECESSARY TO INSERT THE CURRENT RECOMMENDED FORMAT OF VAT SPECIAL CONDITION 3 (available at www.lawsociety.ie in the precedents section of the members' area) AMENDED AS APPROPRIATE.

1. VAT Inclusive Selling Price/ Vendor Charges no VAT/ VAT not Relevant to the Sale

Where the sale of the Subject Property is by auction or private treaty:

- (a) of second-hand residential property sold by the Vendor in a private capacity;
- (b) of a new residential property sold to a private Purchaser and the selling price is VAT inclusive;
- (c) of a freehold/freehold equivalent interest which:
 - (i) is not sold as a TOB where the subject property comprises capital goods; and
 - (ii) is a VAT exempt sale in which the Vendor is neither requesting the Purchaser to exercise the joint option to tax nor requiring the Purchaser to pay the Vendor the amount of the Vendor's capital goods adjustment on the sale;
- (d) by the assignment or surrender of an Occupational Lease which is not:
 - (i) a TOB comprising a legacy lease; and
 - (ii) a supply of a good or a service where VAT is chargeable on the sale; or
- (e) of any other category of sale, not being a TOB referred to in (c)(i) or (d)(i) above, in which VAT will not be chargeable either as the supply of a good or a service;

delete Special Condition 3 entirely.

2. The Vendor Charges VAT at the Appropriate Reduced Rate (Special Condition 3.2)

Special Condition 3.2 is intended for use where the sale of the Subject Property, not being a TOB, is:

- (a) by private treaty or auction of a partially developed freehold/freehold equivalent interest;
- (b) by private treaty or auction of a freehold/freehold equivalent interest coupled with a building agreement;
- (c) by private treaty or auction of a completed "new or nearly new" freehold/freehold equivalent interest;
- (d) by private treaty only, by way of the assignment or surrender of a legacy lease to a person not specified in Section 95(8)(c) of the VAT Act⁵⁰ and which is not covered in (e) below; or
- (e) by private treaty only, by way of the assignment or surrender of a legacy lease to a person

⁵⁰ In other words, the Purchaser has answered "No" to Item 2 of the Purchaser's Statement on Purchaser's VAT Status. See footnote 5.

not specified in Section 95(8)(c) of the VAT Act⁵¹ where the Vendor is a person described in Section 95(7)(b) of the VAT Act who requires the option to tax to be exercised.

In situation (a) or (b), use Special Condition 3.1, 3.2.1 and 3.11 only.

In situation (c), use Special Condition 3.1, 3.2.1, 3.2.2 and 3.11 only.

In situation (d), use Special Condition 3.1, 3.2.1, 3.2.3 and 3.11 only.

In situation (e), use Special Condition 3.1, 3.2.1, 3.2.4 and 3.11 only.

In each case, delete all other clauses in Special Condition 3.

3. The Purchaser Self Accounts for VAT at the Appropriate Reduced Rate (Special Condition 3.3) in a Private Treaty Sale

Special Condition 3.3 is intended for use where the sale of the Subject Property, not being a TOB or an auction sale, is:

- (a) of a freehold/freehold equivalent interest in property, the sale of which is exempt where the Vendor (including a Vendor who is a person described in Section 95(3) of the VAT Act exercising an option under Section 94(5) of the VAT Act) requires that the Purchaser shall cooperate in the exercise of the joint option to tax the sale of the Subject Property⁵²;
- (b) by way of the assignment or surrender of a legacy lease to a Purchaser who is a person specified in Section 95(8)(c) of the VAT Act which is not covered in (c) below;
- (c) by private treaty only, by way of the assignment or surrender of a legacy lease, where the Vendor is a person described in Section 95(7)(b) of the VAT Act⁵³ who requires that the Purchaser, who is also a taxable person, agrees to cooperate in the exercise of the joint option to tax the sale.

In situation (a), use Special Condition 3.1, 3.3.1 and 3.11 only.

In situation (b), use Special Condition 3.1, 3.3.2 and 3.11 only, except where in addition to the sale, the Vendor requires the Purchaser to take responsibility for a Tenant's Refurbishment⁵⁴, in which case use 3.10 also.

In situation (c), use Special Condition 3.1, 3.3.3 and 3.11 only.

In each case, delete all other clauses in Special Condition 3.

4. The Purchaser pays the Vendor an amount to compensate the Vendor for the Vendor's liability to pay a Capital Goods Adjustment or to receive a Capital Goods Adjustment which arises on the sale of a Freehold/Freehold Equivalent Interest which is exempt (Special Condition 3.4)

Special Condition 3.4 is intended for use where the sale, being of a freehold/freehold equivalent interest in property, is not chargeable to VAT, but where as a result of the sale, the Vendor will

⁵¹ Ibid.

⁵² Refer to paragraph 11 of this guide (below) for commentary on the exercise of the joint option.

⁵³ The Vendor was not entitled to deduct VAT on the acquisition or development prior to 1 July 2008 of the Subject Property.

⁵⁴ "Tenant's Refurbishment" means capital goods as described in Section 64(7) of the VAT Act.

suffer a capital goods adjustment and if the Vendor was only entitled to partial deductibility on the acquisition or development of the Subject Property, will be unable to reclaim a capital goods adjustment from Revenue by reason of the sale being exempt and requires the Purchaser to pay the Vendor a sum in addition to the selling price to compensate the Vendor for the amount of such capital goods adjustment or adjustments. This condition can be used in either a private treaty sale or an auction sale of an exempt property where the Vendor does not intend to exercise the joint option to tax.

After every interval in the adjustment period until the adjustment period has expired, the amount of the Vendor's liability and, if applicable, reclaim entitlement on the sale of a property comprising capital goods will reduce. The Special Condition has been drafted to provide that where there is a delay in the completion of the sale and an interval⁵⁵ passes or intervals pass, the amount payable by the Purchaser in respect of the Vendor's capital goods adjustment or adjustments will be reduced so as to conform with the Vendor's actual liability.

Use Special Condition 3.1, 3.4 and 3.11. Delete all other clauses in Special Condition 3.

Rather than use 3.1, 3.4 and 3.11 a Vendor may find it convenient to omit special condition 3 entirely and simply specify a composite selling price.

5. Sale by Auction of a Freehold/Freehold Equivalent Interest which is a Capital Good where, to preserve a VAT neutral position on the sale, the Vendor requires either to be paid an amount to cover the Vendor's Capital Goods Adjustment(s) on the sale or to have the joint option to tax exercised (Special Condition 3.5)

Special Condition 3.5 is intended for use where the sale of the Subject Property being of a freehold/freehold equivalent interest is exempt, but still comprises capital goods. Unless the joint option to tax the sale is exercised, the Vendor must account to Revenue for the capital goods adjustment which will arise for Vendor on the sale and if the Vendor was only entitled to partial deductibility on the acquisition or development of the Subject Property, the Vendor will lose the right to claim a capital goods adjustment from Revenue on the sale.

If the Purchaser is not a taxable person or does not agree to exercise the joint option to tax, the Vendor will generally wish to be compensated by the Purchaser (by way of an additional payment on completion) for the Vendor's liability to pay and if appropriate forego any capital goods adjustment. When a Vendor's solicitor is settling the conditions in an auction sale of this particular type of sale, the VAT status of the Purchaser will be uncertain. Therefore, the Vendor will generally require the Purchaser either to pay the Vendor the amount of any Vendor's capital goods adjustment or adjustments which arises on the sale or, if the Purchaser is a taxable person, to co-operate in the exercise of the joint option to tax the sale.

This condition provides that the default position is that in addition to the Purchase Price, the Purchaser will pay the Vendor the amount of the Vendor's capital goods adjustment but if the Purchaser is a taxable person, the Purchaser has the right, by notifying the Vendor prior to the closing date, to cause the joint option to tax to be exercised whereupon the Purchaser will self account for VAT on the sale.

Use Special Conditions 3.1, 3.5 and 3.11. Delete all other clauses in Special Condition 3.

55 See definition of "interval" in Section 63 (1) of the VAT Act

Special Condition 3.5 is only appropriate for an auction sale of a freehold equivalent interest in the circumstances described above. For an auction of other classes of property see paragraphs 2 and 6.

6. Sale by Auction of Legacy Lease (Special Condition 3.6)

Special Condition 3.6 is intended for use where the sale is by auction of a legacy lease where:

- (a) the Vendor is a taxable person selling to:
 - (i) a Purchaser who is a person who is obliged to self-account for any VAT on sale; or
 - (iii) a Purchaser who is not a person described in Section 95(8)(c) of the VAT Act in which case the Vendor must account for the VAT on the sale and will wish to pass on this VAT cost to the Purchaser; or
- (b) the Vendor is a person described in Section 95(7)(b) of the VAT Act⁵⁶ who requires the sale to be made taxable or to be compensated in lieu for loss of a capital goods adjustment.

In situation (a) above, use Special Condition 3.1, 3.6.1 and 3.11 except where as part of the sale the Vendor requires the Purchaser to take responsibility for a Tenant's Refurbishment⁵⁷ in which case use 3.10 also.

In situation (b) above use Special Condition 3.1, 3.6.2 and 3.11.

In each case delete all other clauses in Special Condition 3.

7. On the sale of a Subject Property constituting a TOB, no VAT applies but the Vendor is required to provide certain information to the Purchaser relating to capital goods (Special Condition 3.7)

Special Condition 3.7 is intended for use in the case of a TOB. If the answer to PCVE 1 is "No" and PCVE 1.1d and PCVE 4 is "Yes", use Special Condition 3.1, 3.7 and 3.11.

8. On the assignment or surrender of an Occupational Lease (other than a Legacy Lease) for a premium paid by the Purchaser to the Vendor, the Purchaser pays the Vendor VAT at the standard rate (Special Condition 3.8)

The assignment or surrender by a Vendor, being a taxable person, of an occupational lease for a premium paid by the Purchaser is regarded not as the supply of immovable goods but rather as the supply of a service which is generally taxable at the standard rate.

VAT is chargeable on a premium paid for:

- (i) the assignment of an occupational lease created on or after 1 July 2008;
- (ii) the surrender of an occupational lease created on or after 1 July 2008 where the landlord's option to tax the rent was not exercised; or
- (iii) the assignment of an occupational lease created prior to 1 July 2008 for a term of less

⁵⁶ See footnote 50.

⁵⁷ See footnote 54.

than 10 years where a waiver of exemption from VAT on letting services was exercised and is in place at the date of the assignment.

However where the occupational lease:

- (a) assigned or surrendered is a legacy lease which is still in the adjustment period, the sale is taxed at the appropriate reduced rate and any premium paid is ignored;
- (b) assigned or surrendered was created prior to 1 July 2008 for a term of less than 10 years and is not subject to a waiver of exemption by the landlord in respect of the rent or other consideration payable thereunder, the sale is exempt and any premium paid is ignored;
- (c) assigned or surrendered is a legacy lease but the adjustment period has expired or another class of occupational lease created prior to 1 July 2008 which was not in the VAT net on 1 July 2008, the sale is exempt and any premium paid is ignored; or
- (d) surrendered only, was created on or after 1 July 2008 where the landlord's option to tax has not been exercised, the sale is exempt and any premium paid is ignored.

If the answer to PCVE 1 is "Yes", the answer to PCVE 2, PCVE 3 and PCVE 4 is "No" and the answer to PCVE 5 is "Yes", use Special Condition 3.1, 3.8, 3.10 (if relevant) and 3.11. Delete all other clauses in Special Condition 3.

9. On the assignment or surrender of certain Occupational Leases (other than Legacy Leases) for a premium (reverse premium) paid by the Vendor to the Purchaser, the Vendor pays the Purchaser VAT at the standard rate (Special Condition 3.9)

The Law Society Taxation Committee understands that Revenue regard the following supplies as taxable at the standard rate:

- (a) the surrender for a reverse premium by a taxable person of an occupational lease created on or after 1 July 2008 where the landlord's option to tax the lease is in place;
- (b) the surrender by a taxable person for a reverse premium of an occupational lease created prior to 1 July 2008 for a term of less than 10 years where the landlord's waiver of exemption has been exercised in respect of the let property and is in place; and
- (c) the assignment for a reverse premium by a taxable person of an occupational lease created on or after 1 July 2008.

In each of situations (a), (b) and (c) above use Special Condition 3.1, 3.9 and 3.11 and if, in addition to the assignment or surrender, the Vendor requires the Purchaser to accept responsibility for a Tenant's Refurbishment⁵⁸, use Special Condition 3.10 also. Delete all other clauses in Special Condition 3.

According to the best information available to the Law Society Taxation Committee, Revenue regard the following supplies as exempt:

- (i) the assignment or surrender by a taxable person for a reverse premium of an occupational

58 See footnote 54.

lease for a term of 10 years or more created prior to 1 July 2008 which is not a Legacy Lease or which was such a Lease but in respect of which the adjustment period has expired.

- (ii) The assignment or surrender by a taxable person of an occupational lease for a term of less than 10 years created prior to 1 July 2008 where the landlord did not waive his exemption from VAT on rent.

10. On the assignment or surrender of an Occupational Lease, the Vendor requires the Purchaser to become responsible for the tenant's capital goods (Tenant's Refurbishment⁵⁹) of the Vendor (Special Condition 3.10)

Special Condition 3.10 is intended for use where a Vendor who was entitled to deduct all VAT incurred on the installation of a Tenant's Refurbishment wishes to oblige the Purchaser to assume responsibility for it after completion.

If the answer to PCVE 7 is "Yes", use Special Condition 3.10 in addition to the relevant Special Condition for the sale of an occupational lease.

11. Note on the Joint Option to Tax

It should be noted that a contract for sale is a Vendor's document, and in this context draft Special Condition 3.3 represents the best position for a Vendor. However, the same cannot be said as regards the position of a Purchaser.

Thus, in this context it is important that a practitioner acting for a Purchaser, on receipt from the Vendor of the draft Conditions of Sale where Special Condition 3.3 is used, also receives responses to the Pre-Contract VAT Enquiries to satisfy him/herself of the correct or best VAT treatment for his or her client.

This is illustrated in two situations.

Situation 1

VAT Special Condition 3.3 as drafted ensures that a property sale that is prima facie exempt from VAT but which is capable of being made subject to VAT by the way of a joint option to tax, is so jointly opted by agreement of both the Vendor and Purchaser, or the Purchaser agrees to pay a compensatory amount to the Vendor to cover any VAT costs. Generally speaking the option to tax will be utilised to ensure the Vendor avoids a VAT liability to Revenue, or alternatively to increase VAT recovery for the Vendor where VAT in relation to the Subject Property was previously disallowed, both being to the benefit of the Vendor.

This may well not be in the best interests of a Purchaser, and a Purchaser should be made aware that in agreeing to such a joint option there are the following implications:-

- i. The Vendor may secure the advantage of avoiding a VAT liability or increasing VAT recovery;
- ii. It brings an otherwise VAT exempt property into the VAT net;

⁵⁹ See footnote 54.

- iii. The Purchaser must monitor the use of the Subject Property for the next 20 years or until sold;
- iv. The Purchaser will have an exposure to VAT costs for any VAT exempt use of the Subject Property over the next 20 years, such exposure to be met from the Purchaser's own resources;
- v. If the Purchaser wants to sell at anytime in the next 20 years, in the absence of major development by him, he will have to get the purchaser from him to agree to a joint option, otherwise he will incur VAT costs; and
- vi. The Purchaser has effectively created a capital good for which he must continue to maintain capital goods records.

Situation 2

This relates to the takeover of a refurbishment capital good by a landlord/assignee on surrender/assignment of an occupational lease. VAT Special Condition 3.10 as drafted provides that, where such a capital good has been created by a Vendor (tenant), the Purchaser (landlord/assignee) agrees to take same over for the purposes of the VAT Act. This mechanism will be utilised to ensure the Vendor (tenant) avoids a VAT liability to Revenue, thus it being to the benefit of the Vendor (tenant).

A refurbishment is defined as development of an existing building, etc. Development means 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, which is very wide. A tenant fit out or other works may very well fall into the definition.

This may well not be in the best interests of a Purchaser, and a Purchaser should be made aware that in agreeing to such a take over there are the following implications:-

- i. The Vendor (tenant) may secure the advantage of avoiding a VAT liability;
- ii. The Purchaser (landlord/assignee) must monitor the use of the refurbishment for the remainder of its Adjustment Period (possibly up to 10 years);
- iii. The Purchaser (landlord/assignee) will have an exposure to VAT costs for any VAT exempt use of the Subject Property over its Adjustment Period (possibly up to 10 years), such exposure to be met from the Purchaser's own resources; and
- iv. The Purchaser (landlord/assignee) steps into the Vendor's (tenant's) shoes for the remainder of the Adjustment Period, and any VAT costs due to exempt use would be in effect a claw back of VAT recovered by the Vendor (tenant).



Law Society of Ireland

SPECIAL CONDITION 3 (February 2014 Edition)

(INSERT (AMENDED AS APPROPRIATE) INTO THE LAW SOCIETY CONDITIONS OF SALE)

For use in sale of property where VAT is relevant to the sale¹

It is recommended that where this special condition is to be used, prior to settling it, the current Pre-Contract VAT Enquiries should be answered.

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3. DEFINITIONS

3.1 In this Special Condition:

“Adjustment Period”, in respect of Capital Goods, is the period attributed under Section 63(1) of the VAT Act but, where appropriate, is the period attributed to that term under Section 95(12)(c) of the VAT Act;

“Accountable Person”, *“Assignment”*, *“Immovable Goods”*, *“Surrender”* and *“Taxable Person”* have the meanings attributed to those terms by Section 2(1) of the VAT Act;

“Capital Goods” has the meaning attributed to that term under Section 2 and Section 63(2) of the VAT Act;

“Capital Goods Adjustment”, a liability to repay an amount of VAT to Revenue which arises on a supply of a capital good under Section 64 of the VAT Act;

“Capital Goods Record” has the meaning attributed to that term under Section 64(12) of the VAT Act;

“Freehold Equivalent Interest” has the meaning attributed to that term under Section 2 and Section 19(2) of the VAT Act;

“Interest” has the meaning attributed to that term in Section 93(1)(a) of the VAT Act;

“Interval” and *“Refurbishment”* have the meanings attributed to those terms under Section 63(1) of the VAT Act;

“Tenant’s Refurbishment”, means capital goods as described in Section 64(7) of the VAT Act;

“VAT” means Value Added Tax; and

“VAT Act” means Value-Added Tax Consolidation Act 2010 and related VAT regulations.

¹ This special condition is not appropriate for use:

- on the sale of secondhand residential property sold in a private capacity;
- on the sale of new residential property to a Purchaser as a private person for a VAT inclusive consideration;
- on the grant of an occupational lease; or
- where VAT is otherwise not relevant to the sale.

In any such case Special Condition 3 will be deleted entirely

3.2 Vendor charges VAT at the Appropriate Reduced Rate

3.2.1 In addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount of any VAT as shall be exigible in relation to the Sale, same to be calculated in accordance with the provisions of the VAT Act and the Purchaser shall pay this amount to the Vendor on the later of the completion of the Sale or when an invoice is required to be issued by the Vendor in accordance with the provisions of the VAT Act on delivery of such invoice to the Purchaser.

3.2.2 If the completion of the Sale, being of a Freehold and/or a Freehold Equivalent Interest, is delayed beyond the Closing Date to the extent that the Sale becomes an exempt sale under the VAT Act and the Subject Property comprises Capital Goods, as soon as practicable after such situation arises, the Vendor shall notify the Purchaser in writing accordingly. In such situation, no VAT shall be payable by the Purchaser to the Vendor under Special Condition 3.2.1 but on completion, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount which prior to completion the Vendor notifies the Purchaser in writing is equal to the amount for which, as a consequence of the Sale, the Vendor is liable to account for to the Revenue under Section 64(6)(b)(i) of the VAT Act, unless not less than three days prior to the closing date:

- the Purchaser demonstrates to the reasonable satisfaction of the Vendor that the Purchaser is a Taxable Person who independently carries on business in the State; and
- the Purchaser notifies the Vendor in writing that the Purchaser irrevocably joins with the Vendor in the exercise of the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act;

in which case, the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate shall be treated as duly exercised and the Purchaser shall account to the Revenue for VAT arising on the Sale on a reverse charge basis in accordance with the provisions of Section 94(6) or Section 94(7)(c) as appropriate of the VAT Act.

3.2.3 The Purchaser is not a person of a kind specified in Section 95(8)(c) of the VAT Act.

The sale of the Subject Property is by private treaty by a Taxable Person and by way of Assignment or Surrender of a lease described in Section 95(1)(b) of the VAT Act (a "Legacy Lease") in respect of which the Adjustment Period will not have expired at the Closing Date.

3.2.4 The Sale is by way of Assignment or Surrender of a lease described in Section 95(1)(b) of the VAT Act (a "Legacy Lease") in respect of which the Adjustment Period will not have expired at the Closing Date and in respect of which the right to exercise the joint option to tax under Section 94(5) of the VAT Act is conferred by Section 95(7)(b) of the VAT Act. Such joint option to tax is hereby exercised. The Purchaser is a Taxable Person for the purpose of the VAT Act which status the Purchaser warrants to the Vendor.

3.3 The Purchaser self-accounts for VAT at the appropriate Reduced Rate in a Private Treaty Sale.

3.3.1 The Sale of the Subject Property is of a Freehold/Freehold Equivalent Interest

in the Subject Property, which is otherwise exempt. The Purchaser is a Taxable Person which status the Purchaser warrants to the Vendor. The joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act is hereby exercised by the Vendor and the Purchaser. The Purchaser shall account to Revenue for any VAT arising on the Sale upon a reverse charge basis in accordance with Section 94(6) or Section 94(7)(c) as appropriate of the VAT ²Act.

3.3.2 The Sale is by private treaty by way of Assignment or Surrender of a lease described in Section 95(1)(b) of the VAT Act (a “Legacy Lease”) in respect of which the Adjustment Period will not have expired at the Closing Date. The Purchaser is a person described in Section 95(8)(c) of the VAT Act, which status the Purchaser hereby warrants to the Vendor. Accordingly, the Purchaser shall account to Revenue for any VAT arising on the sale in accordance with Section 95(8)(c) of the VAT Act.

3.3.3 The Sale is by way of Assignment or Surrender of a lease described in Section 95(1)(b) of the VAT Act (a “Legacy Lease”) in respect of which the Adjustment Period will not have expired at the Closing Date and in respect of which the right to exercise the joint option to tax under Section 94(5) of the VAT Act is conferred by Section 95(7)(b) of the VAT Act. Such joint option to tax is hereby exercised. The Purchaser is a Taxable Person for the purpose of the VAT Act which status the Purchaser warrants to the Vendor. Accordingly, the Purchaser shall account to Revenue for any VAT arising on the Sale upon a reverse charge basis in accordance with of Section 95(8)(c) of the VAT Act³.

3.4 The Purchaser pays the Vendor an amount to compensate the Vendor for the Vendor’s liability to pay the Vendor’s Capital Goods Adjustment which arises on the Sale of a Freehold/Freehold Equivalent Interest which is exempt.

3.4.1 In addition to the Purchase Price, the Purchaser shall pay the Vendor the sum of € _____ being the amount for which, as a consequence of the Sale being exempt, the Vendor is liable to account to Revenue under Section 64(6)(b)(i) of the VAT Act [and € _____ being the amount which as a consequence of the Sale not being taxable, the Vendor is unable to reclaim from Revenue under Section 64(6)(a) of the VAT Act]⁴, such amount [or amounts]⁵ to be reduced as appropriate on the date of completion in the event of the passing of any Interval or Intervals after the Closing Date and on or before the date of completion. Where appropriate, the Vendor shall notify the Purchaser in writing of the amount of any reduction in a timely manner prior to the completion of the Sale.

3.4.2 The Purchaser is not a Taxable Person which status the Purchaser warrants to the Vendor. In addition to the Purchase Price, the Purchaser shall pay the Vendor the sum of € _____ being the amount which, as a consequence of the joint option to tax the Sale not being exercisable or exercised, the Vendor is unable to reclaim from Revenue under Section 64(6)(b)(i) of the VAT Act. Such amount is to be reduced as appropriate on the date of completion in the event of the passing of any Interval or Intervals after the Closing Date and on or before the date of completion. Where appropriate, the Vendor shall notify the Purchaser in writing of the amount of any reduction in a timely manner prior to the completion of the Sale.

² The difference between the situation covered in clause 3.3.2 and the situation covered in clause 3.3.3 is that, in the latter, the joint option to tax is exercised.

³ Ibid.

⁴ Delete words in square brackets unless the Vendor was only entitled to partial deductibility on the acquisition or development of the Subject Property.

⁵ Ibid.

3.5 Sale by auction of a Freehold/Freehold Equivalent Interest which is an exempt sale where, unless the joint option to tax the sale is exercised, the Purchaser pays the Vendor the amount of the Vendor's Capital Goods Adjustment or adjustments which arise on the sale.

The Vendor warrants that the Sale of the Subject Property is exempt subject to the joint option to tax provided that the Purchaser is a Taxable Person for the purpose of the VAT Act.

On completion, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the sum of € _____ being the amount, which as a consequence of the Sale, the Vendor is liable to account for to the Revenue under Section 64(6)(b) of the VAT Act [and € _____ being the amount which, as a consequence of the Sale not being taxable, the Vendor is unable to reclaim from Revenue under Section 64(6)(a) of the VAT Act]⁶, such amount [or amounts]⁷ to be reduced as appropriate on the date of completion in the event of the passing of any Interval or Intervals after the Closing Date and on or before the date of completion, unless, not less than three days prior to the Closing Date:

- the Purchaser demonstrates to the reasonable satisfaction of the Vendor that the Purchaser is a Taxable Person; and
- the Purchaser notifies the Vendor in writing that the Purchaser irrevocably joins with the Vendor in the exercise of the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act;

in which case, the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate shall be treated as duly exercised and the Purchaser shall account to the Revenue for VAT arising on the Sale on a reverse charge basis in accordance with the provisions of Section 94(6) or Section 94(7)(c) as appropriate of the VAT Act.

3.6 Sale by Auction of a Legacy Lease⁸

3.6.1 The Sale of the Subject Property is by way of Assignment or Surrender of a Lease described in Section 95(1)(b) of the VAT Act (a "Legacy Lease") in respect of which the Adjustment Period will not have expired at the Closing Date.

Unless, not less than three days prior to the Closing Date, the Purchaser demonstrates to the reasonable satisfaction of the Vendor that the Purchaser is a person of a kind specified in Section 95(8)(c) of the VAT Act, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount of any VAT as shall be exigible in relation to the Sale on the assumption, whether or not true, that the Purchaser is not a person of a kind specified in Section 95(8)(c) of the VAT Act, same to be calculated in accordance with the provisions of the VAT Act and the Purchaser shall pay this amount to the Vendor on the later of the completion of the Sale or when an invoice is required to be issued by the Vendor in accordance with the provisions of the VAT Act on delivery of such invoice to the Purchaser.

3.6.2 The Sale is by way of Assignment or Surrender of a Lease described in Section 95(1)(b) of the VAT Act (a "Legacy Lease") in respect of which the Adjustment Period referred to in Section 95(12) of the VAT Act will not have expired at the Closing Date.

⁶ Delete words in square brackets unless the Vendor was only entitled to partial deductibility on the acquisition or development of the Subject Property

⁷ Ibid

⁸ See footnote 4 of the Pre-Contract VAT Enquiries (February 2014 Edition)

The Sale is of an Interest in respect of which the right to exercise the joint option to tax under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act is conferred by Section 95(7)(b) provided the Purchaser is a Taxable Person.

On completion, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the sum of € _____ being the amount, which as a consequence of the Sale not being taxable, the Vendor is unable to reclaim from Revenue under Section 64(6)(a) of the VAT Act, such amount to be reduced as appropriate on the date of completion in the event of the passing of any Interval or Intervals after the Closing Date and on or before the date of completion, unless, not less than three days prior to the Closing Date that either:

- the Purchaser demonstrates to the reasonable satisfaction of the Vendor that the Purchaser is both a Taxable Person of a kind described in Section 95(8)(c) of the VAT Act; and
- the Purchaser notifies the Vendor in writing that the Purchaser irrevocably joins with the Vendor in the exercise of the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act;

in which case, the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act shall be treated as duly exercised and

- if the Purchaser is a person not described in Section 95(8)(c) of the VAT Act then, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount of any VAT as shall be exigible in relation to the Sale, same to be calculated in accordance with the provisions of the VAT Act and the Purchaser shall pay this amount to the Vendor on the later of the completion of the Sale or when an invoice is required to be issued by the Vendor in accordance with the provisions of the VAT Act on delivery of such invoice to the Purchaser; and
- if the Purchaser is a person described in Section 95(8)(c) of the VAT Act, the Purchaser shall account to the Revenue for VAT arising on the Sale on a reverse charge basis in accordance with the provisions of Section 94(6) or Section 94(7)(c) as appropriate of the VAT Act.

3.7 On the sale of a property constituting the transfer of a business or part of a business⁹, no VAT applies but the Vendor is required to provide certain information to the Purchaser relating to any Capital Goods comprised in the Subject Property.

The Sale is by way of a transfer of a business.

The Purchaser warrants to the Vendor that the Purchaser is an Accountable Person for the purposes of Section 20(2)(c) the VAT Act and the Purchaser has taken or will take all steps¹⁰ necessary to be taken on the Purchaser's part so that the Sale of the subject property will qualify for relief from VAT under Section 20(2)(c) of the VAT Act, and that the Sale shall not be a supply of goods for the purposes of the VAT Act. The Purchaser shall indemnify and keep the Vendor indemnified against any loss, cost or liability which arises as a result of such warranty being or becoming untrue or incorrect in any respect due to the act, neglect or default of the Purchaser.

⁹ A supply to which Section 20(2)(c) of the VAT Act applies.

¹⁰ For example, in the case of the sale of a let property, Revenue require the Purchaser to exercise the Landlord's joint option to tax in respect a letting to which the Subject Property is subject.

3.8 On the Assignment or Surrender of an Interest in an occupational lease (which is not a Legacy Lease) for a premium paid by the Purchaser to the Vendor where the Purchaser pays the Vendor VAT at the Standard Rate.

The Sale is the supply of a taxable service by the Vendor to the Purchaser for the purposes of the VAT Act. In addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount of any VAT as shall be exigible in relation to the Sale, same to be calculated in accordance with the VAT Act. The Purchaser shall pay this amount to the Vendor on the later of the completion of the Sale or, where an invoice is required to be issued by the Vendor in accordance with the provisions of the VAT Act, on delivery of such an invoice to the Purchaser.

3.9 On the Assignment or Surrender of an interest in an occupational lease (not being a legacy lease) for a premium (reverse premium) paid by the Vendor to the Purchaser, the Vendor pays the Purchaser VAT at the Standard Rate.

The Sale is the supply of a taxable service by the Purchaser to the Vendor for the purpose of the VAT Act.

On the later of the completion of the Sale or where an invoice is required to be issued by the Purchaser in accordance with the provisions of the VAT Act, on delivery of such an invoice to the Vendor, the Vendor shall pay to the Purchaser the amount of any VAT as shall be exigible in relation to the supply in question, same to be calculated in accordance with the provisions of the VAT Act.

3.10 On the Assignment or Surrender of an interest in an occupational lease (legacy or otherwise), the Vendor requires the Purchaser to become responsible for a Tenant's Refurbishment.

The Purchaser undertakes to be responsible for all of the obligations of the Vendor under Section 64(7) of the VAT Act which arise in respect of the Refurbishment of the Subject Property comprising the following works:

[Insert details of works]

The Vendor warrants to the Purchaser that he was entitled to deduct all of the VAT incurred by the Vendor on the acquisition and development of this Refurbishment.

3.11 VAT Information Warranties and Confirmations

Unless previously supplied at or prior to the signing hereof, the Vendor shall supply to the Purchaser:

- copies of the Capital Goods Records for the period up to the latest date prior to the date hereof for the filing of returns in relation to any Capital Goods comprised in the Subject Property¹¹;
- if applicable, a draft of any statement¹² required to be supplied by the Vendor to the Purchaser, under the VAT Act as the Purchaser may reasonably require to enable the Purchaser, on becoming the owner of the Subject Property to comply with the Purchaser's obligations in respect of the Subject Property under the VAT Act;
- answers to any pre-contract VAT enquiries raised by the Purchaser; and

¹¹ Required only if Special Condition 3.7 or 3.10 is used (Transfer of a Business). Delete if not applicable.

¹² Required only if the Subject Property sold is a Legacy Lease. Delete if not applicable.

- such other information in relation to the VAT history of the Subject Property as the Purchaser, acting reasonably, shall in writing require in order to comply with the Purchaser's obligations in respect of the Subject Property under the VAT Act.

The Vendor warrants that all such information and records and, if relevant, any such statement are materially correct and up to date at the date of furnishing thereof and will remain correct and up-to-date on completion save for such adjustment as may be necessary as a result of the passing of any Interval or Intervals, in which case revised information and copy records and if relevant, a revised draft statement to reflect such passing, will be furnished by the Vendor to the Purchaser on or prior to completion.

The certificate of the Vendor's tax advisor shall in the absence of manifest error be conclusive evidence of the amount of any Capital Goods Adjustment relevant to the Subject Property.

The obligations imposed on the Parties under this Agreement shall be in addition to the obligations imposed in relation to the Sale by the VAT Act.