

Transitional measures for supplies of immovable goods. VATA s. 4(3)(ab) (in part) and (8) (in part) and s. 4C

95.—(1) This section applies to—

(a) immovable goods which are acquired or developed by a taxable person prior to 1 July 2008, being completed immovable goods before 1 July 2008, and have not been disposed of by the taxable person prior to that date, until such time as those goods have been disposed of by that taxable person on or after that date, and

(b) an interest in immovable goods within the meaning of section 93 (other than a freehold interest or a freehold equivalent interest) created by a taxable person prior to 1 July 2008 and held by a taxable person on 1 July 2008 and the reversionary interest (2)) on that interest until that interest is surrendered after 1 July 2008.

(2) Where an interest to which subsection (1)(b) applies is surrendered, then, for the purposes of the application of Chapter 2 of Part 8 in respect of the immovable goods concerned—

(a) the total tax incurred shall include the amount of tax chargeable on the surrender in accordance with subsection (8) and shall not include tax incurred prior to the creation of the surrendered interest, and

(b) the adjustment period shall consist of the number of intervals specified in subsection (12)(c)(iv) and the initial interval shall begin on the date of that surrender.

(3) In the case of a supply of immovable goods to which subsection (1)(a) applies, being completed immovable goods within the meaning of section 94—

(a) where the person supplying those goods had no right to deduct under section 12 of the repealed enactment in relation to the tax chargeable on the acquisition or development of those goods prior to 1 July 2008, and

(b) if any subsequent development of those immovable goods occurs on or after 1 July 2008—

(i) that development does not and is not intended to adapt the immovable goods for a materially altered use, and

(ii) the cost of that development does not exceed 25 per cent of the consideration for that supply,

then, subject to section 94 (3), that supply is not chargeable to tax but a joint option for taxation may be exercised in respect of that supply in accordance with section 94 (5) and that tax is payable in accordance with section 94 (6).

(4)(a) Where a person referred to in subsection (1)—

(i) acquired, developed or has an interest in immovable goods to which this section applies,

(ii) was entitled to deduct tax, in accordance with section 12 of the repealed enactment, on that person's acquisition or development of those goods, and

(iii) makes a letting of those immovable goods to which paragraph 11 of Schedule 1 applies,

then that person (in this subsection referred as the "landlord") shall calculate an amount (in this subsection referred to as a "deductibility adjustment") in accordance with the formula set out in paragraph (b) and that amount shall be payable as if it were tax due by that person in accordance with Chapter 3 of Part 9 for the taxable period in which that letting takes place.

(b) The deductibility adjustment shall be calculated in accordance with the formula—

$$\frac{TD \times (Y - N)}{Y}$$

Y

where—

TD is the amount of the tax referred to in paragraph (a)(ii) that the landlord was entitled to deduct,

Y is 20 or, if the interest when it was acquired by the landlord was for a period of less than 20 years, the number of full years in that interest, and

N is the number of full years since the landlord acquired the interest in the immovable goods referred to in paragraph (a) or, if the goods were developed since that interest was acquired, the number of full years since the most recent development,

but if that N is greater than that Y, the deductibility adjustment shall be deemed to be nil.

(5) An assignment or surrender of an interest in immovable goods to which subsection (1)(b) applies is deemed to be a supply of immovable goods for the purposes of this Act for a period of 20 years from the creation of the interest or the most recent assignment of that interest before 1 July 2008, whichever is the later.

(6) Where—

(a) a person makes a supply of immovable goods to which this section applies,

(b) tax is chargeable on that supply, and

(c) that person was not entitled to deduct all the tax charged to that person on the acquisition or development of those immovable goods,

then that person shall be entitled to make the appropriate adjustment that would apply under section 64 (6)(a) as if the capital goods scheme applied to that transaction.

(7) In the case of an assignment or surrender of an interest in immovable goods referred to in subsection (5)—

(a) tax shall be chargeable where the person who makes the assignment or surrender was entitled to deduct in accordance with Chapter 1 of Part 8 any of the tax chargeable on the acquisition of that interest, or the development of those immovable goods, and

(b) tax shall not be chargeable where the person who makes the assignment or surrender had no right to deduction under Chapter 1 of Part 8 on the acquisition of that interest or the development of those immovable goods, but a joint option for taxation of that assignment or surrender may be exercised.

(8)(a) Notwithstanding Chapter 1 of Part 5, the amount on which tax is chargeable on a taxable assignment or surrender to which subsection (7) applies shall be the amount calculated in accordance with the formula set out in paragraph (b) divided by the rate as specified in section 46 (1)(c) expressed in decimal form.

(b) The amount of tax due and payable in respect of a taxable assignment or surrender to which subsection (7) applies is an amount calculated in accordance with the formula—

$$T \times N$$
$$Y$$

where—

T is the total tax incurred referred to in subsection (12)(d) except for the amount of tax charged in respect of any development by the person who makes the assignment or surrender following the acquisition of the interest,

N is the number of full intervals plus one that remain in the adjustment period referred to in subsection (12)(c) at the time of the assignment or surrender,

Y is the total number of intervals in that adjustment period for the person making the assignment or surrender,

and paragraphs (c) to (e) shall apply to that tax.

(c) Where tax is chargeable in relation to a supply of immovable goods which is a surrender of an interest in immovable goods or an assignment of an interest in immovable goods to—

(i) an accountable person,

(ii) a Department of State or a local authority, or

(iii) a person who supplies immovable goods of a kind referred to in paragraph (a) of the definition of “exempted activity” in section 2 (1), or services of a kind referred to in paragraphs 1, 5(4), 6, 7, 8, 11 and 14(3) of Schedule 1, in the course or furtherance of business,

then—

(I) the person to whom those goods are supplied shall be accountable for and liable to pay the tax chargeable on that supply,

(II) such tax shall be payable as if it were tax due by that person in accordance with Chapter 3 of Part 9 for the taxable period within which the supply to the person took place, and

(III) for the purposes of subparagraphs (I) and (II), the person to whom the goods are supplied shall be an accountable person and the person who made the surrender or assignment shall not be accountable for or liable to pay such tax.

(d) Where the supply referred to in paragraph (c) is to a Department of State or a local authority, then, notwithstanding anything to the contrary effect in section 14 (2), the Department of State or local authority shall be accountable for and liable to pay the tax referred to in that paragraph.

(e)(i) A surrender or assignment of immovable goods referred to in paragraph (c) shall be treated as a supply of goods made by the person to whom the goods are supplied.

(ii) Subject to subparagraph (iii), on the surrender or assignment of immovable goods referred to in subparagraph (i), the person who makes the surrender or assignment shall issue a document to the person to whom the surrender or assignment is made indicating—

(I) the value of the interest being surrendered or assigned, and

(II) the amount of tax chargeable on that surrender or assignment.

(iii) Subparagraph (ii) shall not apply where the person who makes the surrender or assignment is obliged to issue a document in accordance with subsection (9)(a) to the person to whom that surrender or assignment is made.

(iv) For the purposes of Chapter 1 of Part 8, that Chapter shall apply as if this paragraph had not been enacted.

(9)(a) Where an interest in immovable goods referred to in subsection (7) is assigned or surrendered to a taxable person during the adjustment period and tax is payable in respect of that assignment or surrender, then the person who makes the assignment or surrender shall issue a document to the person to whom the interest is being assigned or surrendered containing the following information:

(i) the amount of tax due and payable on that assignment or surrender; and

(ii) the number of intervals remaining in the adjustment period as determined in accordance with subsection (12)(c)(iv).

(b) Where paragraph (a) applies, the person to whom the interest is assigned or surrendered shall be a capital goods owner for the purpose of Chapter 2 of Part 8 in respect of the capital good being assigned or surrendered, and shall be subject to that Chapter and for this purpose—

(i) the adjustment period shall be the period referred to in subsection (12)(c) as correctly specified on the document referred to in paragraph (a),

(ii) the total tax incurred shall be the amount of tax referred to in subsection (12)(d) as correctly specified in the document referred to in paragraph (a), and

(iii) the initial interval shall be a period of 12 months beginning on the date on which the assignment or surrender occurs.

(10) Where a person cancels an election to be an accountable person in accordance with section 8 (2), then, in respect of the immovable goods which were used in supplying the services for which that person made that election, Chapter 2 of Part 8 does not apply if those immovable goods are held by that person on 1 July 2008 and are not further developed after that date.

(11) In the application of Chapter 2 of Part 8 to immovable goods and interests in immovable goods to which this section applies, section 64 (2) to (5) shall be disregarded in respect of the person who, on 1 July 2008, owns those immovable goods or holds an interest in those immovable goods, but—

(a) if that person develops those immovable goods and that development is a refurbishment of Part 8) that is completed on or after 1 July 2008, section 64 (2) to (5) shall not be disregarded in respect of that refurbishment,

(b) if, on or after 23 February 2010, that person—

(i) first uses those immovable goods (in this subsection referred to as the “first use”), or

(ii) changes the use of those immovable goods (in this subsection referred to as the “changed use”),

and the first use, or the changed use, as the case may be, is a use of those immovable goods for a purpose other than the provision of a letting of the type referred to in paragraph 11(1) of Schedule 1, then section 64 (4)(a) to (d) shall not be disregarded for the remainder of the adjustment period applicable to those immovable goods.

(12) For the purposes of applying Chapter 2 of Part 8 to immovable goods or interests in immovable goods to which this section applies—

(a) any interest in immovable goods to which this section applies shall be treated as a capital good,

(b) any person who has an interest in immovable goods to which this section applies shall be treated as a capital goods owner, but shall not be so treated to the extent that the person has a reversionary interest in those immovable goods if those goods were not developed by, on behalf of, or to the benefit of, that person,

(c) the period to be treated as the adjustment period in respect of immovable goods or interests in immovable goods to which this section applies is—

(i) in the case of the acquisition of the freehold interest or freehold equivalent interest in those immovable goods, 20 years from the date of that acquisition,

(ii) in the case of the creation of an interest in those immovable goods, 20 years or, if the interest when it was created was for a period of less than 20 years, the number of full years in that interest when created, whichever is the shorter,

(iii) in the case of the assignment or surrender of an interest in immovable goods prior to 1 July 2008, the period remaining in that interest at the time of the assignment or surrender of that interest or 20 years, whichever is the shorter, or

(iv) in the case of—

(I) the surrender or first assignment of an interest in immovable goods on or after 1 July 2008, the number of full years remaining in the adjustment period as determined in accordance with subparagraphs (ii) and (iii), plus one, or

(II) the second or subsequent assignment of an interest in immovable goods after 1 July 2008, the number of full intervals remaining in the adjustment period as determined in accordance with clause (I), plus one,

and this number shall thereafter be the number of intervals remaining in the adjustment period,

but where the immovable goods have been developed since the acquisition of those immovable goods or the creation of that interest, 20 years from the date of the most recent development of those goods,

(d) the amount of tax charged, or the amount of tax that would have been chargeable but for the application of section 20 (2)(c) or 56, to the person treated as the capital goods owner on the acquisition of, or development of, the capital goods shall be treated as the total tax incurred,

(e) the total tax incurred divided by the number of intervals in the adjustment period referred to in paragraph (c) shall be treated as the base tax amount,

(f) each year in the adjustment period referred to in paragraph (c) shall be treated as an interval,

(g) the first 12 months of the adjustment period referred to in paragraph (c) shall be treated as the initial interval,

(h) the second year of the adjustment period referred to in paragraph (c) shall be treated as the second interval but, in the case of an interest which is assigned or surrendered on or after 1 July 2008, the second interval of the adjustment period shall have the meaning assigned to it by Chapter 2 of Part 8,

(i) each year following the second year in the adjustment period referred to in paragraph (c) shall be treated as a subsequent interval,

(j) the amount which shall be treated as the total reviewed deductible amount shall be the amount of the total tax incurred as provided for in paragraph (d) less—

(i) any amount of the total tax incurred which was charged to the person treated as the capital goods owner but which that owner was not entitled to deduct in accordance with Chapter 1 of Part 8,

(ii) any amount accounted for in accordance with section 12D(4) of the repealed enactment by the person treated as the capital goods owner in respect of a transfer of the goods to that owner prior to 1 July 2008,

(iii) any tax payable in respect of those capital goods in accordance with section 19 (1)(f), or section 4(3)(a) of the repealed enactment, by the person treated as the capital goods owner, and

(iv) where an adjustment of deductibility has been made in respect of the capital good in accordance with subsection (4)(a) or section 4(3)(ab) of the repealed enactment, the amount “TD” in the formula set out in subsection (4)(b),

(k) the amount referred to in paragraph (d) less the amount referred to in paragraph (j) shall be treated as the non-deductible amount,

and for the purposes of applying paragraphs (f), (h) and (i) “year” means each 12 month period in the adjustment period, the first of which begins on the first day of the initial interval referred to in paragraph (g).

(13)(a) Subject to paragraph (b), where a taxable person acquires immovable goods on or after 1 July 2007, then, notwithstanding subsection (11), section 64 (2) shall apply and, notwithstanding subsection (12)(j), the total reviewed deductible amount shall have the meaning assigned to it by Chapter 2 of Part 8.

(b) Paragraph (a) does not apply where a taxable person has made an adjustment in accordance with section 61 (7) in respect of those goods.