

Option to tax letting of immovable goods. VATA s. 7A

97.—(1)(a)(i) Tax shall be chargeable in accordance with this Act on the supply of a service to which paragraph 11 of Schedule 1 relates (in this section referred to as a “letting”) where, subject to subsections (2) and (4), the supplier (in this section referred to as a “landlord”) opts to make that letting so chargeable.

(ii) A landlord who exercises such option (in this Act referred to as a “landlord’s option to tax”) shall, notwithstanding section 6 (1) and (2), be an accountable person and liable to account for the tax on that letting in accordance with this Act, and that letting shall not be a supply to which section 52 applies.

(b) Where a taxable person is entitled to deduct tax on the acquisition or development of immovable goods on the basis that the goods will be used for the purpose of a letting or lettings in respect of which a landlord’s option to tax will apply, then—

(i) the person shall be treated as having exercised the landlord’s option to tax in respect of any lettings of those immovable goods, and

(ii) that option shall be deemed to continue in place until that person makes a letting in respect of which neither of the conditions of paragraph (c) is fulfilled.

(c) A landlord’s option to tax in respect of a letting is exercised by—

(i) a provision in writing in a letting agreement between the landlord and the person to whom the letting is made (in this section referred to as a “tenant”) that tax is chargeable on the rent, or

(ii) the issuing by the landlord of a document to the tenant giving notification that tax is chargeable on the letting.

(d) A landlord’s option to tax in respect of a letting is terminated—

(i) in the case of an option exercised in accordance with paragraph (b), by making a letting of the immovable goods referred to in that paragraph in respect of which neither of the conditions of paragraph (c) is fulfilled,

(ii) in the case of an option exercised in accordance with paragraph (c), by—

(I) an agreement in writing between the landlord and tenant that the option is terminated and specifying the date of termination which shall not be earlier than the date of that agreement, or

(II) the delivery to the tenant of a document giving notification that the option has been terminated and specifying the date of termination which shall not be earlier than the date that notification is received by the tenant,

(iii) where the landlord and tenant become connected persons,

(iv) where the landlord or a person connected with the landlord occupies the immovable goods that are subject to that letting whether that person occupies those goods by way of letting or otherwise, or

(v) where the immovable goods that are subject to that letting are used or to be used for residential purposes within the meaning of subsection (4).

(2)(a) Subject to paragraphs (b) and (c), a landlord may not opt to tax a letting—

(i) where the landlord and the tenant in respect of that letting are connected persons, or

(ii) where the landlord, whether or not connected to the tenant, or a person connected to the landlord, occupies the immovable goods that are subject to that letting whether that landlord or that person occupies those goods by way of letting or otherwise.

(b)(i) Subject to subparagraph (ii), paragraph (a)(i) and subsection (1)(d)(iii) shall not apply where the immovable goods which are the subject of the letting are used for the purposes of supplies or activities which entitle the tenant to deduct at least 90 per cent of the tax chargeable on the letting in accordance with Chapter 1 of Part 8.

(ii) Where a landlord has exercised a landlord's option to tax in respect of a letting to which paragraph (a)(i) would have applied but for subparagraph (i), paragraph (a)(i) shall apply from the end of the first accounting year in which the goods are used for the purposes of supplies or activities which entitle the tenant to deduct less than 90 per cent of the said tax chargeable.

(c)(i) Subject to subparagraph (ii), paragraph (a)(ii) and subsection (1)(d)(iv) shall not apply where the occupant (being any person including the landlord referred to in that paragraph or that subsection) uses the immovable goods which are the subject of the letting for the purpose of making supplies which entitle that occupant to deduct, in accordance with Chapter 1 of Part 8, at least 90 per cent of all tax chargeable in respect of goods or services used by that occupant for the purpose of making those supplies.

(ii) Where a landlord has exercised a landlord's option to tax in respect of a letting to which paragraph (a)(ii) would have applied but for subparagraph (i), paragraph (a)(ii) shall apply from the end of the first accounting year in which the immovable goods are used for the purpose of making supplies which entitle that occupant to deduct less than 90 per cent of the said tax chargeable.

(3)(a) In this subsection—

“control”, in the case of a body corporate or in the case of a partnership, has the meaning assigned to it by section 4 (2);

“relative” means a brother, sister, ancestor or lineal descendant.

(b) For the purposes of this section, any question of whether a person is connected with another person

shall be determined in accordance with the following:

(i) a person is connected with an individual if that person is the individual's spouse, or is a relative, or the spouse of a relative, of the individual or of the individual's spouse;

(ii) a person is connected with any person with whom he or she is in partnership, and with the spouse or a relative of any individual with whom he or she is in partnership;

(iii) subject to clauses (IV) and (V) of subparagraph (v), a person is connected with another person if he or she has control over that other person, or if the other person has control over the first-mentioned person, or if both persons are controlled by another person or persons;

(iv) a body of persons is connected with another person if that person, or persons connected with him or her, have control of that body of persons, or the person and persons connected with him or her together have control of it;

(v) a body of persons is connected with another body of persons—

(I) if the same person has control of both or a person has control of one and persons connected with that person or that person and persons connected with that person have control of the other,

(II) if a group of 2 or more persons has control of each body of persons and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he or she is connected,

(III) if both bodies of persons act in pursuit of a common purpose,

(IV) if any person or any group of persons or groups of persons having a reasonable commonality of identity have or had the means or power, either directly or indirectly, to determine the activities carried on or to be carried on by both bodies of persons, or

(V) if both bodies of persons are under the control of any person or group of persons or groups of persons having a reasonable commonality of identity;

(vi) a person in the capacity as trustee of a settlement is connected with—

(I) any person who in relation to the settlement is a settlor, or

(II) any person who is a beneficiary under the settlement.

(4) A landlord's option to tax may not be exercised in respect of all or part of a house or apartment or other similar establishment to the extent that those immovable goods are used or to be used for residential purposes, including any such letting—

(a) governed by the Residential Tenancies Act 2004 ,

(b) governed by the Housing (Rent Books) Regulations 1993 ),

(c) governed by section 10 of the Housing Act 1988 ,

(d) of a dwelling to which Part II of the Housing (Private Rented Dwellings) Act 1982 applies, or

(e) of accommodation which is provided as a temporary dwelling for emergency residential purposes.

(5) A landlord's option to tax, once exercised, shall immediately cease to have effect to the extent that the immovable goods which are the subject of the letting to which the option applies come to be used for residential purposes which fall within subsection (4).