

Waiver of exemption under old rules. VATA s. 7(2) (in part), s. 7(3), (4) and (6), s. 7B(1) to (5), s. 7B(6) (in part) and s. 7B(9) and (10)

96.—(1) In this section “waiver” means a waiver of exemption from tax under section 7(1) of the repealed enactment.

(2) A waiver shall cease to have effect at the end of the taxable period during which it is cancelled in accordance with subsection (3).

(3) Provision may be made by regulations for the cancellation, at the request of a person or in accordance with subsection (8) or (12), of a waiver by the person and for the payment by that person to the Revenue Commissioners as a condition of cancellation of such sum (if any) as when added to the total amount of tax (if any) due by him or her in accordance with Chapter 3 of Part 9 in relation to the supply of services by him or her to which the waiver applied is equal to the total of—

(a) the amount of tax deducted by the person in accordance with Chapter 1 of Part 8 in respect of tax borne or paid in relation to the supply of such services,

(b) the amount of tax deducted by the person in accordance with section 12 of the repealed enactment, prior to the commencement of the letting of the immovable goods to which the waiver relates, in respect of or in relation to his or her acquisition of his or her interest in, or his or her development of, those immovable goods,

(c) the amount of tax that would have been deductible by the person in accordance with section 12 of the repealed enactment if tax had been chargeable on the transfer of ownership of goods to him or her in respect of which section 20 (2)(c) was applied, and those goods were used by him or her in the supply of such services, and

(d) the amount of tax that would have been deductible by that person in accordance with section 12 of the repealed enactment if—

(i) tax had been chargeable on the supply to that person of goods or services in respect of which paragraph 7(7) of Schedule 2 was applied, and

(ii) those goods or services were used, in relation to the supply of services to which the waiver applied, by the person.

(4) Where there is a waiver in respect of the supply of a service, tax shall be charged in relation to the person making the waiver during the period for which the waiver has effect as if the service to which the waiver applies was not specified in Schedule 1.

(5) Where a person cancelled his or her waiver before 1 July 2008, then, for the purposes of applying Chapter 2 of Part 8, the adjustment period (1) or, as the context may require, the period to be treated as

the adjustment period in accordance with section 95 (12)) in relation to any capital good the tax chargeable on that person's acquisition or development of which that person was obliged to take into account when that person made that cancellation, shall be treated as if it ended on the date on which that cancellation had effect.

(6) Subsections (6) to (12) apply to an accountable person (in those subsections referred to as a "landlord")—

(a) who has a waiver, and

(b) who had not cancelled the waiver before 1 July 2008.

(7) For the purposes of applying Chapter 2 of Part 8, the adjustment period (1) or, as the context may require, the period to be treated as the adjustment period in accordance with section 95 (12)) in relation to a capital good the tax chargeable on the landlord's acquisition or development of which that landlord was obliged to take into account when that landlord cancelled his or her waiver, shall end on the date on which that cancellation had effect.

(8) Where a landlord makes or has made a letting and, were that letting not already subject to a waiver, that letting would be one in respect of which the landlord would not, because of section 97 (2), be entitled to exercise a landlord's option to tax in accordance with section 97, then the landlord's waiver of exemption shall, subject to subsection (9), immediately cease to apply to that letting, and—

(a) that landlord shall pay an amount, as if it were tax due by that person in accordance with Chapter 3 of Part 9 for the taxable period in which the waiver ceases to apply to that letting, equal to the sum (if any) which would be payable in accordance with subsection (3) in respect of the cancellation of a waiver as if that landlord's waiver applied only to the immovable goods or the interest in immovable goods subject to that letting to which the waiver has ceased to apply, and

(b) the amounts taken into account in calculating that sum (if any) shall be disregarded in any future cancellation of that waiver.

(9)(a) Subject to paragraph (c), where a landlord has a letting to which subsection (8) would otherwise apply, that subsection shall not apply while, on the basis of the letting agreement in place, the tax that the landlord will be required to account for, in equal amounts for each taxable period, in respect of the letting during the next 12 months is not less than the amount calculated at that time in accordance with the formula set out in subsection (10).

(b) Where the conditions in paragraph (a) fail to be satisfied because of a variation in the terms of the lease or otherwise or if the tax paid at any time in respect of the letting is less than the tax payable, this subsection shall cease to apply.

(c) This subsection applies to a letting referred to in paragraph (a)—

(i) where a landlord has a waiver in place on 18 February 2008 and—

(I) on 1 July 2008 that letting had been in place since 18 February 2008, or

(II) the immovable goods subject to the letting are owned by that landlord on 18 February 2008 and are in the course of development by or on behalf of that landlord on that day,

or

(ii) where a landlord holds an interest, other than a freehold interest or a freehold equivalent interest in the immovable goods subject to the letting, acquired between 18 February 2008 and 30 June 2008 from a person with whom the landlord is not connected, within the meaning of section 97, in a transaction which was treated as a supply of goods in accordance with section 4 of the repealed enactment.

(10) The formula to be used for the purposes of subsection (9) is—

A — B

12 — Y

where—

A is the amount of tax that would be taken into account for the purposes of subsection (3) in respect of the acquisition or development of the immovable goods, if the waiver were being cancelled at the time referred to in subsection (9),

B is the amount of tax chargeable on the consideration by the landlord in respect of the letting of those immovable goods and paid in accordance with Chapter 3 of Part 9 that would be taken into account for the purposes of subsection (3) if the waiver were being cancelled at that time and that letting were the only one to which that waiver applied, and

Y is 11, or the number of full years since the later of—

(i) the date of the first letting of those goods, and

(ii) the date on which the landlord waived exemption,

where that number is less than 11 years.

(11) Where—

(a) a landlord has a letting to which subsection (8) or (9) applies,

(b) that landlord becomes a person in a group within the meaning of section 15 on or after 1 July 2008, and

(c) the person to whom that letting is made is a person in that group,

then the person referred to in section 15 (1)(a)(i) in respect of that group shall be liable to pay the amount as specified in subsection (8)(a) as if it were tax due in accordance with Chapter 3 of Part 9 in the taxable period during which that landlord became a person in that group.

(12)(a) In this subsection “relevant immovable goods” means immovable goods the tax chargeable on the acquisition or development of which a landlord would be obliged to take into account in accordance with subsection (3) in relation to the cancellation of that landlord’s waiver.

(b) This subsection applies where—

(i) on or after 3 June 2009, a landlord has an interest in relevant immovable goods,

(ii) the landlord ceases, whether as a result of disposing of such goods or otherwise, to have an interest in any such goods, and

(iii) on the date when that landlord ceases to have any such interest, that landlord’s waiver has not been cancelled in accordance with subsection (3).

(c) Where this subsection applies—

(i) the landlord’s waiver of exemption shall be treated as if it were cancelled on the date referred to in paragraph (b)(iii), and

(ii) that landlord shall pay an amount, being the amount payable in accordance with subsection (3) in respect of the cancellation of that waiver, as if it were tax due by that landlord for the taxable period in which the waiver of exemption is so treated as cancelled.