

Capital goods scheme. VATA s. 12E (3)(a), (c) and (d) and (4) to (13)

64.—(1)(a) In relation to a capital good the number of intervals in the adjustment period during which adjustments of deductions are required under this Chapter to be made is—

(i) in the case of refurbishment, 10 intervals,

(ii) in the case of a capital good to which subsection (5)(a) or (b) applies, the number of full intervals remaining in the adjustment period applicable to that capital good plus one as required to be calculated in accordance with the formula set out in subsection (6)(b), and

(iii) in all other cases, 20 intervals.

(b) Where a capital goods owner supplies or transfers by means of a transfer to which section 20 (2)(c) applies a capital good during the adjustment period, then the adjustment period for that capital good for that owner shall end on the date of that supply or transfer.

(2)(a) Where the initial interval proportion of deductible use in relation to a capital good differs from the proportion of the total tax incurred in relation to that capital good which was deductible by that owner in accordance with Chapter 1, then that owner shall, at the end of the initial interval, calculate an amount in accordance with the formula—

$$A - B$$

where—

A is the amount of the total tax incurred in relation to that capital good which was deductible by that owner in accordance with Chapter 1, and

B is the total reviewed deductible amount in relation to that capital good.

(b) Where in accordance with paragraph (a)—

(i) A is greater than B, then the amount calculated in accordance with the formula set out in paragraph (a) shall be payable by that owner as if it were tax due in accordance with Chapter 3 of Part 9 for the taxable period immediately following the end of the initial interval, or

(ii) B is greater than A, then that owner is entitled to increase the amount of tax deductible for the purposes of Chapter 1 by the amount calculated in accordance with paragraph (a) for the taxable period immediately following the end of the initial interval.

(c) Where a capital good is not used during the initial interval, then the initial interval proportion of deductible use is the proportion of the total tax incurred that is deductible by the capital goods owner

in accordance with Chapter 1.

(3)(a) Subject to subsection (4)(e), where in respect of an interval (other than the initial interval) the proportion of deductible use for that interval in relation to a capital good differs from the initial interval proportion of deductible use in relation to the capital good, then the capital goods owner shall, at the end of that interval, calculate an amount in accordance with the formula—

$$C - D$$

where—

C is the reference deduction amount in relation to that capital good, and

D is the interval deductible amount in relation to that capital good.

(b) Where in accordance with paragraph (a)—

(i) C is greater than D, then the amount calculated in accordance with the formula set out in paragraph (a) shall be payable by that owner as if it were tax due in accordance with Chapter 3 of Part 9 for the taxable period immediately following the end of that interval, or

(ii) D is greater than C, then that owner is entitled to increase the amount of tax deductible for the purposes of Chapter 1 by the amount calculated in accordance with the formula set out in paragraph (a) for the taxable period immediately following the end of that interval.

(c) Where for the second or any subsequent interval, a capital good is not used during that interval, the proportion of deductible use in respect of that capital good for that interval shall be the proportion of deductible use for the previous interval.

(4)(a) Where in respect of a capital good for an interval (other than the initial interval) the proportion of deductible use expressed as a percentage differs by more than 50 percentage points from the initial interval proportion of deductible use expressed as a percentage, then the capital goods owner shall at the end of that interval calculate an amount in accordance with the formula—

$$(C - D) \times N$$

where—

C is the reference deduction amount in relation to that capital good,

D is the interval deductible amount in relation to that capital good, and

N is the number of full intervals remaining in the adjustment period at the end of that interval plus one.

(b) Where in accordance with paragraph (a)—

(i) C is greater than D, then the amount calculated in accordance with the formula set out in paragraph (a) shall be payable by that owner as if it were tax due in accordance with Chapter 3 of Part 9 for the taxable period immediately following the end of that interval, or

(ii) D is greater than C, then that owner is entitled to increase the amount of tax deductible for the purposes of Chapter 1 by the amount calculated in accordance with the formula set out in paragraph (a) for the taxable period immediately following the end of that interval.

(c) Paragraph (a) shall not apply to a capital good or part thereof that has been subject to subsection (5)(a) or (b) during the interval to which paragraph (a) applies.

(d) Where a capital goods owner is obliged to carry out a calculation referred to in paragraph (a) in respect of a capital good, then, for the purposes of the remaining intervals in the adjustment period, the proportion of deductible use in relation to that capital good for the interval in respect of which the calculation is required to be made shall be treated as if it were the initial interval proportion of deductible use in relation to that capital good and, until a further calculation is required under paragraph (a), all other definition amounts shall be calculated accordingly.

(e) Where the other provisions of this subsection apply to an interval, then subsection (3) does not apply to the interval.

(5)(a) Where a capital goods owner who is a landlord in respect of all or part of a capital good terminates his or her landlord's option to tax in accordance with section 97 (1) in respect of any letting of that capital good, then—

(i) that owner is deemed, for the purposes of this Chapter, to have supplied and simultaneously acquired the capital good to which that letting relates,

(ii) that supply shall be deemed to be a supply on which tax is not chargeable and no option to tax that supply in accordance with section 94 (5) shall be permitted on that supply, and

(iii) the capital good acquired shall be treated as a capital good for the purposes of this Chapter and the amount calculated in accordance with subsection (6)(b) on that supply shall be treated as the total tax incurred in relation to that capital good.

(b) Where in respect of a letting of a capital good that is not subject to a landlord's option to tax in accordance with section 97 (1), a landlord subsequently exercises a landlord's option to tax in respect of a letting of that capital good, then—

(i) that landlord is deemed, for the purposes of this Chapter, to have supplied and simultaneously acquired that capital good to which that letting relates,

(ii) that supply shall be deemed to be a supply on which tax is chargeable, and

(iii) the capital good acquired shall be treated as a capital good for the purposes of this Chapter, and—

(I) the amount calculated in accordance with subsection (6)(a) shall be treated as the total tax incurred in relation to that capital good,

(II) the total tax incurred shall be deemed to have been deducted in accordance with Chapter 1 at the time of that supply.

(6)(a)(i) Where—

(I) a capital goods owner supplies a capital good or transfers a capital good, being a transfer to which section 20 (2)(c) applies (other than a transfer to which subsection (10)(c) applies) during the adjustment period in relation to that capital good,

(II) tax is chargeable on that supply, or tax would have been chargeable on that transfer but for the application of section 20 (2)(c), and

(III) the non-deductible amount in relation to that capital good for that owner is greater than zero or, in the case of a supply or transfer during the initial interval, that owner was not entitled to deduct all of the total tax incurred in accordance with Chapter 1,

then that owner is entitled to increase the amount of tax deductible by that owner for the purposes of Chapter 1 for the taxable period in which the supply or transfer occurs by an amount (in this paragraph referred to as the “relevant amount”) calculated in accordance with subparagraph (II).

(ii) The relevant amount shall be calculated in accordance with the formula—

$$\frac{E \times N}{T}$$

where—

E is the non-deductible amount in relation to that capital good or, in the case of a supply before the end of the initial interval, the amount of the total tax incurred in relation to that capital good which was not deductible by that owner in accordance with Chapter 1,

N is the number of full intervals remaining in the adjustment period in relation to that capital good at the time of supply plus one,

T is the total number of intervals in the adjustment period in relation to that capital good.

(b)(i) Where—

(I) a capital goods owner supplies a capital good during the adjustment period applicable to that capital good,

(II) tax is not chargeable on that supply, and

(III) either—

(A) the total reviewed deductible amount in relation to that capital good is greater than zero, or

(B) in the case of a supply before the end of the initial interval where the amount of the total tax incurred in relation to that capital good which was deductible by that owner in accordance with Chapter 1 is greater than zero,

then that owner shall calculate, in accordance with subparagraph (ii), an amount (in this paragraph referred to as the “relevant amount”) which shall be payable as if it were tax due in accordance with Chapter 3 of Part 9 for the taxable period in which the supply occurs.

(ii) The relevant amount shall be calculated in accordance with the formula—

$$\frac{B \times N}{T}$$

T

where—

B is the total reviewed deductible amount in relation to that capital good or, in the case of a supply to which subparagraph (i)(III)(B) applies, the amount of the total tax incurred in relation to that capital good which that owner claimed as a deduction in accordance with Chapter 1,

N is the number of full intervals remaining in the adjustment period in relation to that capital good at the time of supply plus one, and

T is the total number of intervals in the adjustment period in relation to that capital good.

(c) Where a capital goods owner supplies or transfers, being a transfer to which section 20 (2)(c) applies, part of a capital good during the adjustment period, then, for the remainder of the adjustment period applicable to that capital good—

(i) the total tax incurred,

(ii) the total reviewed deductible amount, and

(iii) all other definition amounts,

in relation to the remainder of that capital good for that owner shall be adjusted accordingly on a fair

and reasonable basis.

(7)(a) Where a tenant who has an interest in immovable goods (other than a freehold equivalent interest) and who is the capital goods owner in respect of a refurbishment of those goods assigns or surrenders the interest during the adjustment period applicable to the refurbishment, then the tenant—

(i) shall, in accordance with the formula set out in subsection (6)(b), calculate an amount in respect of the refurbishment, and

(ii) shall pay the amount as if it were tax due of Part 9) for the taxable period in which the assignment or surrender occurs.

(b) Paragraph (a) shall not apply where—

(i) either—

(I) the total reviewed deductible amount in relation to that capital good is equal to the total tax incurred in relation to that capital good, or

(II) in relation to an assignment or surrender that occurs prior to the end of the initial interval in relation to that capital good, the tenant was entitled to deduct all of the total tax incurred in accordance with Chapter 1 in relation to that capital good,

(ii) the tenant enters into a written agreement with the person to whom the interest is assigned or surrendered, to the effect that that person shall be responsible for all obligations under this Chapter in relation to the capital good referred to in paragraph (a) from the date of the assignment or surrender of the interest referred to in paragraph (a), as if—

(I) the total tax incurred and the amount deducted by that tenant in relation to that capital good were the total tax incurred and the amount deducted by the person to whom the interest is assigned or surrendered, and

(II) any adjustments required to be made under this Chapter by the tenant were made,

and

(iii) the tenant issues a copy of the capital good record in respect of the capital good referred to in paragraph (a) to the person to whom the interest is being assigned or surrendered.

(c) Where paragraph (b) applies, the person to whom the interest is assigned or surrendered—

(i) shall be responsible for the obligations referred to in paragraph (b)(ii), and

(ii) shall use the information in the copy of the capital good record issued by the tenant in accordance with paragraph (b)(iii) for the purposes of calculating any tax chargeable or deductible in accordance with

this Chapter in respect of that capital good by that person from the date of the assignment or surrender of the interest referred to in paragraph (a).

(d) Where the capital good is one to which subsection (11) applies, paragraphs (a), (b) and (c) shall not apply.

(8)(a) Paragraph (c) applies where—

(i) either—

(I) a capital goods owner supplies a capital good during the adjustment period applicable to that capital good and tax is chargeable on that supply, or

(II) a capital goods owner transfers (other than a transfer to which subsection (10)(c) applies) a capital good during the adjustment period applicable to that capital good and tax would have been chargeable on that transfer but for the application of section 20 (2)(c),

(ii) at the time of that supply or transfer, that owner and the person to whom the capital good is supplied or transferred are connected within the meaning of section 97, and

(iii) the amount of tax—

(I) chargeable on the supply of that capital good,

(II) that would have been chargeable on the transfer of that capital good but for the application of section 20 (2)(c), or

(III) that would have been chargeable on the supply but for the application of section 56,

is less than the amount (in this subsection referred to as the “adjustment amount”) calculated in accordance with paragraph (b).

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

$H \times N$

T

where—

H is the total tax incurred in relation to that capital good for the capital goods owner making that supply or transfer,

N is the number of full intervals remaining in the adjustment period in relation to that capital good plus one, and

T is the total number of intervals in the adjustment period in relation to that capital good.

(c) The capital goods owner shall calculate an amount, which shall be payable by that owner as if it were tax due in accordance with Chapter 3 of Part 9 for the taxable period in which the supply or transfer occurs, in accordance with the formula—

$I - J$

where—

I is the adjustment amount, and

J is the amount of tax chargeable on the supply of that capital good, or the amount of tax that would have been chargeable on the transfer of that capital good but for the application of section 20 (2)(c), or the amount of tax that would have been chargeable on the supply but for the application of section 56.

(9)(a) In this subsection—

“connected supply” means a supply or transfer of a capital good which is a supply or transfer on which a seller would, but for the application of this subsection, be obliged to calculate an amount of tax due in accordance with subsection (8);

“purchaser” means the person to whom the supply or transfer referred to in subsection (8) is made;

“seller” means the capital goods owner referred to in subsection (8) who makes the supply or transfer of the capital good referred to in that subsection.

(b) Subsection (8) shall not apply where—

(i) a connected supply occurs and the seller enters into a written agreement with the purchaser to the effect that that purchaser shall be responsible for all obligations under this Chapter in relation to the capital good from the date of the supply or transfer of that capital good, as if—

(I) the total tax incurred and the amount deducted by that seller in relation to that capital good were the total tax incurred and the amount deducted by that purchaser, and

(II) any adjustments required to be made under this Chapter by that purchaser were made,

and

(ii) the seller issues a copy of the capital good record in respect of the capital good referred to in subparagraph (i) to the purchaser.

(c) Where paragraph (b) applies, the purchaser shall—

(i) be responsible for the obligations referred to in paragraph (b)(i), and

(ii) use the information in the copy of the capital good record issued by the seller in accordance with paragraph (b)(ii) for the purposes of calculating any tax chargeable or deductible in accordance with this Chapter in respect of that capital good by that purchaser from the date on which the supply or transfer referred to in paragraph (b)(i) occurs.

(10)(a) Where a capital goods owner acquires a capital good—

(i) by way of a transfer, being a transfer to which section 20 (2)(c) applies other than a transfer to which paragraph (c) applies, on which tax would have been chargeable but for the application of section 20 (2)(c), or

(ii) on the supply or development of which tax was chargeable in accordance with section 56,

then, for the purposes of this Chapter, that capital goods owner is deemed to have claimed a deduction in accordance with Chapter 1 of the tax that would have been chargeable—

(I) on the transfer of that capital good but for the application of section 20 (2)(c), less any amount accounted for by that owner in respect of that transfer in accordance with paragraph (b), and

(II) on the supply or development of that capital good but for the application of section 56.

(b)(i) Where—

(I) a transfer of ownership of a capital good (in this paragraph referred to as the “relevant capital good”) occurs, being a transfer to which section 20 (2)(c) applies, but excluding a transfer to which paragraph (c) applies, and

(II) the transferee would not have been entitled to deduct all of the tax that would have been chargeable on that transfer but for the application of section 20 (2)(c),

then that transferee shall calculate an amount (in this paragraph referred to as the “relevant amount”) in accordance with subparagraph (ii).

(ii) The relevant amount shall be calculated in accordance with the formula—

$$F - G$$

where—

F is the amount of tax that would have been chargeable but for the application of section 20 (2)(c), and

G is the amount of that tax that would have been deductible in accordance with Chapter 1 by that transferee if section 20 (2)(c) had not applied to that transfer.

(iii) The relevant amount shall be payable by that transferee as if it were tax due in accordance with Chapter 3 of Part 9 for the taxable period in which the transfer occurs.

(iv) For the purposes of this Chapter, the relevant amount shall be deemed to be the amount of the total tax incurred in relation to the relevant capital good that the transferee was not entitled to deduct in accordance with Chapter 1.

(c) Where a capital goods owner makes a transfer of a capital good to which this paragraph applies—

(i) the transferor shall issue a copy of the capital good record to the transferee,

(ii) the transferee becomes the successor to the capital goods owner who transferred the capital good and is responsible for all obligations of that owner under this Chapter from the date of the transfer of that good, as if—

(I) the total tax incurred and the amount deducted by the transferor in relation to the good were the total tax incurred and the amount deducted by the transferee, and

(II) any adjustments required to be made under this Chapter by the transferor had been made,

and

(iii) the transferee as successor shall use the information in the copy of the capital good record issued by the transferor in accordance with subparagraph (i) for the purpose of calculating the tax chargeable or deductible by the successor in accordance with this Chapter for the remainder of the adjustment period applicable to that good as from the date of its transfer.

(d) Paragraph (c) applies to a transfer of a capital good if—

(i) the transfer is of the kind referred to in section 20 (2)(c), and

(ii) but for the application of section 20 (2), that transfer would be a supply—

(I) that is exempt in accordance with section 94 (2) or 95 (3) or (7)(b), or

(II) in respect of which tax is chargeable in accordance with section 95 (7)(a).

(11) Where a capital good is destroyed during the adjustment period in relation to that capital good, then no further adjustment under this Chapter shall be made by the capital goods owner in respect of any remaining intervals in the adjustment period in relation to that capital good.

(12) A capital goods owner shall create and maintain a record (in this Chapter referred to as a “capital good record”) in respect of each capital good and that record shall contain sufficient information to determine any adjustments in respect of that capital good required in accordance with this Chapter.

(13) The Revenue Commissioners may make regulations necessary for the purposes of the operation of this Chapter, in particular in relation to the duration of a subsequent interval where the accounting year of a capital goods owner changes.