94.—(1) In this section—

“completed”, in respect of immovable goods, means that the development of those goods has reached the state, apart from only such finishing or fitting work that would normally be carried out by or on behalf of the person who will use them, where the goods can effectively be used for the purposes for which the goods were designed, and the utility services required for those purposes are connected to the goods;

“occupied”, in respect of immovable goods, means—

(a) occupied and fully in use following completion, where that use is one for which planning permission for the development of those goods was granted, and

(b) where those goods are let, occupied and fully in such use by the tenant.

(2) Subject to subsections (3), (5), (8) and (9) and section 95 (7)(a), tax is not chargeable on the supply of immovable goods—

(a) that have not been developed within 20 years prior to that supply,

(b) being completed immovable goods, the most recent completion of which occurred more than 5 years prior to that supply, and those goods have not been developed within that 5 year period,

(c) being completed immovable goods that have not been developed since the most recent completion of those goods, where that supply—

(i) occurs after the immovable goods have been occupied for an aggregate of at least 24 months following the most recent completion of those goods, and

(ii) takes place after a previous supply of those goods on which tax was chargeable and that previous supply—

(I) took place after the most recent completion of those goods, and

(II) was a transaction between persons who were not connected within the meaning of section 97,

(d) being a building that was completed more than 5 years prior to that supply and on which development was carried out in the 5 years prior to that supply where—

(i) such development did not and was not intended to adapt the building for a materially altered use, and

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

or

(e) being a building that was completed within the 5 years prior to that supply where—

(i) the building had been occupied for an aggregate of at least 24 months following that completion,

(ii) that supply takes place after a previous supply of the building on which tax was chargeable and that previous supply—

(I) took place after that completion of the building, and

(II) was a transaction between persons who were not connected within the meaning of section 97,

and

(iii) if any development of that building occurred after that completion—

(I) such development did not and was not intended to adapt the building for a materially altered use, and

(II) the cost of such development did not exceed 25 per cent of the consideration for that supply.

(3) Where a person supplies immovable goods to another person and in connection with that supply a taxable person enters into an agreement with that other person or with a person connected with that other person to carry out a development in relation to those immovable goods, then—

(a) the person who supplies the goods shall, in relation to that supply, be deemed to be a taxable person,

(b) the supply of the goods shall be deemed to be a supply to which section 3 applies, and

(c) subsection (2) does not apply to that supply.

(4) Section 6 (1) and (2) does not apply in relation to a person who makes a supply of immovable goods.

(5) Subject to subsection (9), where a taxable person who carries on a business in the State supplies immovable goods to another taxable person who carries on a business in the State in circumstances where that supply would otherwise be exempted because of subsection (2), or section 95 (3) or (7)(b), then, notwithstanding those provisions, tax is chargeable on that supply, but only if the supplier and the taxable person to whom the supply is made have, no later than the 15th day of the month after the month during which the supply occurred, entered into an agreement in writing to opt to have tax chargeable on that supply (in this Act referred to as a “joint option for taxation”).

(6) Where a joint option for taxation is exercised in accordance with subsection (5), then—

(a) the person to whom the supply is made shall, in relation to that supply, be an accountable person and shall be liable to pay the tax chargeable on that supply as if that person supplied those goods, and

(b) the person who made the supply shall not be accountable for or liable to pay such tax.

(7)(a) In this subsection—

“owner” means the accountable person referred to in section 22 (3);

“purchaser” means the person to whom the immovable goods that are referred to in paragraph (b) are supplied;

“vendor” means the person referred to in section 22 (3), not being the accountable person referred to in that section, who disposes of the immovable goods that are referred to in paragraph (b).

(b) Where a supply of immovable goods is a supply to which section 22 (3) applies and that supply would otherwise be exempted because of subsection (2), or section 95 (3) or (7)(b), then, notwithstanding those provisions, tax is chargeable on that supply where—

(i) the purchaser is a taxable person, and

(ii) the vendor and the purchaser have, no later than the 15th day of the month after the month during which the supply occurred, entered into an agreement in writing to opt to have tax chargeable on that supply.

(c) Where paragraph (b) applies—

(i) the purchaser shall, in relation to that supply, be an accountable person and shall be liable to pay the tax chargeable on that supply as if that purchaser supplied those goods,

(ii) neither the vendor nor the owner shall be accountable for or liable to pay that tax,

and

(iii) sections 65 (4) and 76 (2) shall not apply.

(d) Paragraph (b) shall not apply where the purchaser is a person connected (3)) with either the vendor or the owner.

(e) Where a supply of immovable goods is a supply to which section 22 (3) applies and that supply would otherwise be exempted because of subsection (2), then, notwithstanding that provision, tax is chargeable on that supply where—

(i) the immovable goods are buildings designed as or capable of being used as a dwelling,

(ii) the owner is a person who developed those immovable goods in the course of a business of developing immovable goods or is a person connected with that person within the meaning of section 97 (3), and

(iii) the owner was entitled to a deduction under Chapter 1 of Part 8 for tax chargeable to that person in respect of that owner's acquisition or development of those immovable goods.

(8)(a) In this subsection and in subsection (9)—

"recipient" has the meaning assigned to it by section 16 (1)(a).

"relevant supply" has the meaning assigned to it by section 16 (1)(a).

(b) Where a taxable person supplies immovable goods to another person in circumstances where that supply would otherwise be exempt in accordance with subsection (2), tax shall, notwithstanding that subsection, be chargeable on that supply where—

(i) the immovable goods are buildings designed as or capable of being used as a dwelling,

(ii) the person who makes that supply is a person who developed the immovable goods in the course of a business of developing immovable goods or a person connected with that person within the meaning of section 97 (3), and

(iii) the person who developed those immovable goods was entitled to a deduction under Chapter 1 of Part 8 for tax chargeable to that person in respect of that person's acquisition or development of those immovable goods.

(c) In the case of a building to which this subsection would apply if the building were supplied by the taxable person at any time during the capital goods scheme adjustment period for that building—

(i) section 64 (4) and (5) shall not apply, and

(ii) notwithstanding section 64 (2), the proportion of total tax incurred that is deductible by that person shall be treated as the initial interval proportion of deductible use.

(d) Where a relevant supply is a supply of immovable goods to which this subsection would apply, the recipient shall be treated thereafter, for the purposes of this subsection in respect of those immovable goods, as if that recipient were a person connected (3)) to the person who developed those immovable goods.

(9)(a) Where a relevant supply occurs and that supply would otherwise be exempt in accordance with subsection (2), then—

(i) the recipient may opt to tax that supply (in this subsection referred to as an "option for taxation"), and

(ii) if that option is exercised—

(I) notwithstanding subsection (2), tax shall be chargeable on that supply, and

(II) subsection (5) shall not apply.

(b) The option for taxation shall not apply to relevant supplies that are exempt in accordance with section 93 (2) or 95 (3) or (7)(b).

(c) The option for taxation shall be deemed to be exercised by the recipient in relation to a relevant supply which would otherwise be exempt in accordance with subsection (2)(b) to (e).