

# VAT on Property

The VAT on Property regime was substantially revised in 2008 and the notes set out below relate to the “new VAT on Property” rules introduced on 01 July 2008. The VAT treatment of property supplies before 01 July 2008 is substantially different and formal tax advice is recommended where a supply predates the current regime, or an interest in the property was acquired under the old regime so it is a transitional property.

## When is the Supply of a Property Subject to VAT?

The supply of a completed property in the course of business is not taxable unless the building is new (section 94 VAT Consolidation Act 2010 “VATCA 10”).

To come within the charge to VAT:

- The property must have been developed recently so it is a new property.
- It must have been supplied for consideration in the course of business.

In general VAT is charged at a rate of 13.5 % on a supply of property.

## What is Meant by Developed?

Development in relation to land is defined in section 2 VATCA 10 as:

- the construction, demolition, extension, alteration or reconstruction of any building on the land, or
- the carrying out of any engineering or other operation in, on, over or under the land to adapt it for materially altered use.

Development other than minor development essentially makes a property “new” for VAT purposes. For example, where an undeveloped property or an “old” property is developed, the property is considered “new” for VAT purposes following the completion of that development.

Land is regarded as developed when a new building is constructed or an existing building is extended, altered, reconstructed or demolished. If work is done to a property (which can include land which has no buildings on it) and this adapts the land for a materially altered use, the land is developed by that work. However work that does not materially alter the use of the land is not development.

For example if a farmer builds a road across a green field and pipes water into it for livestock, the land is not developed as the use of the land does not change. If the same farmer built a road across another green field, and laid pipes so that he can offer part of the field for sale as a serviced site, the work would develop the property for VAT purposes as it is intended to adapt the land, changing the use from agricultural property to a building site.

## **What is a New Property?**

A property is generally considered “new” for five years after it is completed (the “five-year rule”).

However, there is an exception. If a property is occupied for a total of two years after it is completed, it will no longer be regarded as “new” on a second or subsequent supply where VAT was charged on a post-completion supply (the “two-year rule”).

Once a property ceases to be “new,” the supply of that property is automatically exempt from VAT. However, a vendor and purchaser may jointly opt to make a supply subject to VAT.

The first supply of a residential property by a developer is always subject to VAT, regardless of when it was completed. In addition if a property is developed by work being done to adapt it for a materially altered use, but there is no building on the property, it is subject to VAT for 20 years after the development.

If the purchaser of a property enters into a connected agreement with a taxable person such as a developer and, or a builder to develop the property then the supply of the site will be subject to CAT even though it has not yet been developed.

If the supply takes place within the VAT-life of the property (generally 20 years from the acquisition), and VAT was recovered, there will be Capital Goods Scheme (CGS) implications on sale. This may result in a clawback of VAT recovered by the vendor if the parties do not opt to tax the sale.

A vendor with a CGS exposure will generally want to opt to tax a supply so that it is subject to VAT to avoid this clawback.

## **What is Minor Development in Relation to a Property?**

A completed property is regarded as “new” for a maximum period of 5 years from completion. If development work is carried out on a property which is no longer “new,” and it is not just minor development work, the property is regarded as new again when the development work is completed.

“Completion” occurs when the development of the property has reached the stage where it can be used for the purposes for which it was designed.

Minor development consists of work that does not adapt the building for a materially altered use and does not have a total cost exceeding 25% of the consideration for the supply of the building and it does not “renew” a building to bring it back into the VAT net.

## **Example – 5 & 2 Year Rules**

F Ltd is a construction company that completes a commercial unit on 01 June 2020 and sells it to G Ltd on 20 July 2020. The sale is in the course of business and the building is “new” under the five-year rule as this is the first supply within five years of completion. The sale by F Ltd is subject to VAT.

G Ltd occupies the building from 01 August 2020 and then sells the property to H Ltd on 30 April 2021. The property is still “new” for VAT purposes. The sale is within five years of completion and the property has not been occupied for two years. The sale by G Ltd is subject to VAT.

H Ltd occupies the building from 01 June 2021 up to the date of sale of the property on 01 October 2022. At this point, the property has been occupied for a total of more than 2 years, so the 2-year rule applies and the supply is exempt from VAT.

## **When is a Property Supplied in the Course of Business?**

The term “in the course of business” is interpreted broadly. A person who engages in a single property transaction on a once-off basis may be acting in the course of business.

For example, a person who constructs or arranges for the construction of a residence on the site of an existing dwelling for subsequent sale would be regarded as acting in the course of business, even if the site was part of the grounds of that person’s private residence.

## **How is a Lease Treated for VAT?**

The standard rule for leases is that the grant of a lease is an exempt supply of services for VAT purposes. A landlord who makes an exempt supply when letting property is not entitled to deduct VAT incurred on the acquisition or development of the property.

A landlord may opt to tax a letting (subject to certain exceptions), following which the lease is treated as a service and the rent is subject to VAT at the standard rate of 23 %.The landlord would then be making a VATable supply and entitled to deduct VAT incurred on the acquisition or development of the property.

A landlord cannot opt to tax a lease in the following circumstances:

- Where the property is occupied for residential purposes (section 97(4) VATCA 10).
- Where the letting is between connected persons, unless the tenant is entitled to deduct at least 90% of the VAT on the rent.
- Where the property is occupied by the landlord or a person connected with the landlord.

Long leases (known as freehold equivalent) are treated in the same way as a supply of the freehold property. Revenue's rule of thumb is that leases for 75 years or longer are generally freehold equivalents.

## What is the Capital Goods Scheme (CGS)?

The CGS applies on the basis that each property on which VAT is charged has a VATable life (or CGS adjustment period) during which VAT recovered may be clawed back. The CGT life is 20 years for a newly developed property or 10 years for a refurbishment.

A taxpayer with a business of making VAT supplies can recover VAT on expenditure paid out in the course of the business and this may include VAT paid on the acquisition or development of a property. VAT recovered may then be clawed back if the property is not put to a VATable use throughout the CGS adjustment period (of 10 or 20 years).

The CGS rules divide the VAT reclaimed on acquisition into 20 intervals (10 intervals for a refurbishment). The exposure to a clawback reduces by 1/20 (or 1/10) as each interval passes, until there is no further risk of clawback after 20 years (or 10 years for a refurbishment).

If the VAT use of the property during any interval differs from the VAT use during the initial interval, an adjustment may be required, resulting in either a payment of VAT to Revenue or an additional refund of VAT.