Notes for Guidance – VAT Consolidation Act 2010

- updated to include Finance Act 2018 changes.

These notes give a comprehensive section-by-section commentary on the provisions of the Value-Added Tax Consolidation Act 2010 (No. 31 of 2010). They incorporate changes made by Finance Acts, the Finance (Tax Appeals) Act 2015 and changes made by Ministerial Regulations under the European Communities Act 1972.

The notes contain:

- An overview of the provisions of each Part of the Act;
- A commentary on every section in each Part of the Act, giving a detailed description of the provisions and effects of the sections. References in the right-hand margin of each page are references to the subsection (and the paragraph and subparagraph, etc., as appropriate) of the section being read. Examples are included to illustrate how particular provisions work.

These notes are for guidance only and do not purport to be a definitive legal interpretation of the provisions of the Value-Added Tax Consolidation Act 2010.

PART 1 – PRELIMINARY AND GENERAL ... 8
1. Short title ... 8
2. Interpretation - general ... 8
3. Charge of value-added tax ... 14
PART 2 – ACCOUNTABLE PERSONS ... 15
Chapter 1 - Interpretation ... 15
4. Definitions – Part 2 ... 15
Chapter 2 - General rules ... 16
5. Persons who are, or who may become, accountable persons ... 16
6. Persons not accountable persons unless they so elect ... 18
7. Treatment of persons as not accountable ... 20
8. Cancellation of election ... 20
Chapter 3 - Rules for intra-Community acquisitions ... 22
9. Intra-Community acquisitions and accountable persons ... 22
10. Certain supplies of goods – supplier not established in the State ... 24
11. Other provisions in relation to goods ... 25
Chapter 4 - Services supplied in the State by persons established outside the State ... 27
12. Services received from abroad and accountable persons ... 27
13. Certain supplies of services – supplier not established in the State ... 29
Chapter 5 - Supplementary provisions ... 29
14. The State and public bodies ... 29
15. VAT groups ... 31
16. Reverse charge for certain supplies ... 32
17. Other provisions in relation to services ... 35
18. Distortion of competition, deemed taxable supplies, etc. ... 36
PART 3 – TAXABLE TRANSACTIONS ... 38
Chapter 1 - Supply of goods ... 38
19. Meaning of supply of goods ... 38
20. Transfers, etc. deemed not to be supplies ... 41
21. Supplies made free of charge ... 42
22. Special rules in relation to supplies of goods ... 43
23. Supply following intra-Community acquisition ... 44
Chapter 2 - Intra-Community acquisitions ... 44
24. Intra-Community acquisitions of goods ... 44
Chapter 3 - Supply of services ... 46
25. Meaning of supply of services ... 46
26. Transfer of intangible business assets deemed not to be supply of services 47
27. Self-supply of services ... 48
28. Special rules in relation to supplies of services ... 49
PART 4 – PLACE OF TAXABLE TRANSACTIONS ... 51
Chapter 1 - Place of supply of goods ... 51
29. General rules ... 51
30. Goods supplied to non-registered persons ... 52
31. Gas and electricity supplies ... 54
Chapter 2 - Place of intra-Community acquisitions ... 55
32. Intra-Community acquisitions of goods ... 55
Chapter 3 - Place of supply of services ... 56
33. Application and interpretation of section 34 ... 56
34. General rules ... 59
35. Use and enjoyment provisions ... 61

PART 5 – TAXABLE AMOUNT 66
Chapter 1 – Taxable amount – principal provisions 66
36. Definitions – Chapter 1 (Part 5) 66
37. General rules on taxable amount 67
38. Determination that open market value applies 68
39. General provisions on consideration 69
40. Special consideration rule, triangulation 70
41. Two-thirds rule 70
42. Taxable amount for certain supplies 72
43. Vouchers, etc 74
43A. Vouchers – Multi-purpose and single-purpose, etc. 76
44. Non-business use of immovable goods 78
Chapter 2 – Adjustment and recovery of consideration 78
45. Adjustment and recovery of consideration 78
PART 6 – RATES AND EXEMPTION 80
Chapter 1 - Rates 81
46. Rates of tax 81
47. Composite and multiple supplies 82
48. Works of art, etc. 83
49. Contract work 84
50. Provisions in relation to certain supplies 84
51. Determinations on rates and exemptions 85
Chapter 2 – Exemption 87
52. General rule on exempted activity 87
PART 7 – PROVISIONS RELATING TO IMPORTS, EXPORTS, ETC. 88
53. Imports – general provisions 89
54. Remission or repayment of tax on certain imported goods 90
55. Goods in transit – miscellaneous provisions 91
56. Zero-rating scheme for qualifying businesses 92
57. Remission of tax on goods exported 94
58. Retail export scheme 95
PART 8 – DEDUCTIONS 97
Chapter 1 - General provisions 98
59. Deduction for tax borne or paid 98
60. General limits on deductibility 102
61. Apportionment for dual use inputs 103
62. Reduction of tax deductible in relation to qualifying vehicles 105
62A. Adjustment of tax deductible in relation to unpaid consideration 106
Chapter 2 - Capital goods scheme 107
63. Interpretation and application 107
64. Capital goods scheme 108
PART 9 – OBLIGATIONS OF ACCOUNTABLE PERSONS 115
Chapter 1 - Registration 116
65. Registration 116
Chapter 2 - Invoicing 117
66. Issue of invoices and other documents 117
67. Amendments to invoices 119
68. Flat-rate farmer invoices and other documents 121
69. Invoices or credit notes – errors, etc. 123
70. Time limits for issuing invoices, etc. 124

71. Self-billing and outsourcing....124
72. Storage of invoices....125
73. Requests for particulars in respect of repayment of tax....126
Chapter 3 - Returns and payments of tax – main rules....127
74. Tax due on supplies....127
75. Tax due on intra-Community acquisitions....129
76. Returns and remittances....130
77. Authorisations in relation to filing dates....132
77A. Adjustments to returns....135
78. Electronic remittances and returns....135
79. Special provisions in relation to payment dates....136
Chapter 4 –Moneys received basis....138
80. Tax due on moneys received basis....138
Chapter 5 – Expressions of doubt....141
81. Letter of expression of doubt....141
Chapter 6 - Recapitulative statements....143
82. Statement of intra-Community supplies of goods....143
83. Statement of intra-Community supplies of taxable services....144
Chapter 7 - Record keeping....145
84. Duty to keep records....145
85. Supplementary provisions on records....147
PART 10 – SPECIAL SCHEMES....149
Chapter 1 – Special Schemes - Miscellaneous....149
86. Special provisions for tax invoiced by flat-rate farmers....149
86A. Restriction of flat-rate addition....150
87. Margin scheme – taxable dealers....151
88. Margin scheme – travel agents....157
89. Margin scheme – auctioneers....159
90. Investment gold....161
91. Electronic services scheme....164
Chapter 2 – Special Schemes for Telecommunications Services, Broadcasting Services and Electronically Supplied Services....166
91A. Definitions....166
91B. Non-Union scheme (where the State is Member State of identification)....167
91C. Non-Union scheme (where the State is Member State of consumption)....169
91D. Union scheme (where the State is Member State of identification)....170
91E. Union scheme (where the State is Member State of consumption)....171
91F. Regulations: special schemes for telecommunications services, broadcasting services and electronically supplied services....173
Chapter 3 – Suspension arrangements for alcohol products....173
92. Suspension arrangements for alcohol products....173
PART 11 – IMMOVABLE GOODS....175
93. Supply of immovable goods (old rules)....176
94. Supplies of immovable goods (new rules)....177
95. Transitional measures for supplies of immovable goods....182
96. Waiver of exemption under old rules....188
97. Option to tax letting of immovable goods....191
98. Valuation of an interest in immovable goods....193
PART 12 – REFUNDS AND REPAYMENTS OF TAX....195
99. General provisions on refund of tax....195

100. Unjust enrichment ... 196
101. Intra-Community refunds of tax ... 198
102. Refunds to taxable persons established outside the Community ... 201
103. Ministerial refund orders ... 201
104. Repayments in specific circumstances ... 202
105. Interest on refunds of tax ... 204
PART 13 – ADMINISTRATION AND GENERAL ... 206
Chapter 1 - Administration ... 206
106. Care and management of tax ... 206
107. Officer responsible in case of body of persons ... 207
108. Inspection and removal of records ... 207
Chapter 1A – Special Measures for the protection of the tax ... 208
108A. Notice of requirement to furnish certain information, etc. ... 208
108B. Notice of requirement to issue a document ... 209
108C. Joint and several liability for tax ... 210
108D. Cancellation of a registration number – special provisions for notification and publication ... 211
109. Security to be given by certain taxable persons ... 211
Chapter 2 – Estimation, assessment and time limits ... 212
110. Estimation of tax due ... 212
111. Assessment of tax due ... 214
112. Generation of electronic, etc. estimates and assessments ... 215
113. Time limits ... 216
Chapter 3 - Interest and penalties ... 217
114. Interest payable by accountable persons ... 217
114A. Interest payable in certain circumstances ... 219
115. Penalties generally ... 219
116. Penalty for deliberately or carelessly making incorrect returns, etc. ... 221
117. Penalty for assisting in making incorrect returns ... 224
118. Mitigation and application of penalties ... 224
Chapter 4 – Appeals and regulations ... 225
119. Appeals ... 225
120. Regulations ... 227
PART 14 – REPEALS, CONSEQUENTIAL AMENDMENTS, TRANSITIONAL MEASURES AND COMMENCEMENT ... 230
121. Definition of "repealed enactments" ... 230
122. Repeal of the Value-Added Tax Act 1972, etc. ... 230
123. Consequential amendments, repeals and revocations ... 231
124. Transitional provisions ... 231
125. Commencement ... 232
SCHEDULES ... 233
Schedule 1 – Exempt activities ... 233
Schedule 2 – Zero-rated goods and services ... 233
Schedule 3 – Goods and services chargeable at the reduced rate ... 234
Schedule 4 – Agricultural production activities and services ... 234
Schedule 5 – Works of art, collectors' items and antiques ... 235
Schedule 6 – Activities listed in Annex 1 of the VAT Directive ... 235
Schedule 7 – Consequential amendments ... 235
Schedule 8 – Repeals and Revocations ... 235

The Value-Added Tax Consolidation Act 2010 is divided into 14 Parts as follows:

- **Part 1** contains the short title of the Act and definitions and interpretations used throughout the Act. It also contains the charging section for value-added tax.
- **Part 2** contains the provisions relating to persons who are accountable for value-added tax. It includes the general rules on who must register for VAT and account for the tax as well as rules in relation to different types of supplies of goods and services.
- **Part 3** contains provisions outlining the transactions that are taxable for value-added tax purposes. It covers supplies of goods, intra-Community acquisitions and supplies of services.
- **Part 4** sets out the rules on the place of supply for the transactions – goods, intra-Community acquisitions and services – identified in Part 3.
- **Part 5** contains provisions on the taxable amount for VAT – that is, the amount on which tax is chargeable.
- **Part 6** covers rates. It also contains the general rule on activity that is exempted from value-added tax.
- **Part 7** contains provisions dealing with imports from, and exports to, destinations outside the Community. It also has rules on the zero-rating scheme for qualifying businesses.
- **Part 8** covers provisions on deductions for value-added tax paid. This includes the provisions relating to the capital goods scheme.
- **Part 9** covers obligations of persons accountable for value-added tax. It includes the rules on registering for the tax, invoicing and record keeping. It also contains provisions on the time when VAT chargeable is due, on VAT returns and payment of tax, including the moneys received basis of accounting. Part 9 also deals with the special returns to be made by traders in connection with supplies to other EU countries.
- **Part 10** covers a number of special schemes provided for under the VAT code, including the scheme for tax invoiced by flat-rate farmers, the margin schemes for motor dealers, travel agents and auctioneers, the special scheme for electronic services supplied from outside the EU and the special schemes for telecommunications services, broadcasting services and electronically supplied services.

- **Part 11** contains provisions in relation to supplies of immovable goods and options to tax lettings of property. This Part encompasses the old property rules in place up to 1 July 2008, the new rules that now apply, as well as transitional measures.
- **Part 12** contains provisions dealing with refunds and repayments of value-added tax. This includes refunds to foreign-based traders both within and outside the EU, unjust enrichment and circumstances under which interest on refunds is available.
- **Part 13** contains administrative provisions for value-added tax. It includes the care and management provisions, powers, estimates, assessments, interest and penalty provisions, appeals and regulations.
- **Part 14** contains provisions relating to repeals, the commencement of the Act and transitional provisions.

There are also 8 Schedules to the Act, as follows:

- **Schedule 1** contains a list of activities that are exempt from value-added tax.
- **Schedule 2** lists goods and services taxable at the zero rate.
- **Schedule 3** lists goods and services liable to VAT at the reduced rate (currently 9% and 13.5%).
- **Schedule 4** lists agricultural production activities and services for the purposes of value-added tax, as provided for in Annexes VII and VIII of the VAT Directive.
- **Schedule 5** contains a list of those works of art, antiques and collectors' items to which the reduced rate of value-added tax may be applied in certain circumstances.
- **Schedule 6** lists activities that are taxable when carried out by public bodies on a more than negligible scale and is taken from Annex I of the VAT Directive.
- **Schedule 7** provides for a list of the enactments that are repealed and the Statutory Instruments that are revoked as a result of the enactment of the VAT Consolidation Act 2010.
- **Schedule 8** lists amendments to other enactments consequential on the enactment of the VAT Consolidation Act 2010.

PART 1 – PRELIMINARY AND GENERAL

Overview

This Part contains the short title of the Act and interpretations used throughout the Act. It also contains the charging section for value-added tax.

1. Short title

This section contains the short title of the Act. It provides that the Act may be cited as the Value-Added Tax Consolidation Act 2010.

2. Interpretation - general

Summary

This section provides for the interpretation of terms and expressions used in the Act. The various definitions apply unless the context requires otherwise – as provided for by section 20 of the Interpretation Act 2005. The Interpretation Act 2005 also contains general rules for the construction of statutes, which apply also to this Act.

Details

Most of the definitions are in *subsection (1)*, and many are self-explanatory. **(1)**
The following may be noted:

The term **business** is given a meaning that reflects the definition of economic activity in the VAT Directive. It includes normal trading activities, mining and agricultural activities, professional activities and activities involving the exploitation of intellectual property.

Goods include both movable and immovable objects, both new and used. It does not include what are called, in legal terms, *things in action* – for example, postage stamps, share certificates and money that is legal tender in any country. **Second-hand goods** are defined for the purpose of the margin scheme in *section 87*.

Goods threshold (currently €75,000) and **services threshold** (currently €37,500) are also defined for the purpose of the Act. VAT registration is obligatory where turnover exceeds, or is likely to exceed, these amounts in any 12-month period. Persons may elect to register when their turnover is below these thresholds – see *section 6*. Note that other thresholds also exist for different purposes:

- Persons must register for VAT when the value of their intra-Community acquisitions exceeds a threshold of €41,000 in a 12-month period. See *section 9* for details.

- Businesses making distance sales (mail order, etc.) of goods to private customers in Ireland must register when their turnover exceeds €35,000 in a calendar year. See *section 30* for details.

A **taxable person** means a person who independently carries on a business – in the EU (including Ireland) or elsewhere. This definition includes a person who engages in activities that are exempt from VAT. It also includes flat-rate-farmers. The term **independently** is defined separately in the context of taxable person, and excludes a person who is employed. This mirrors the equivalent term used in the VAT Directive. **Taxable goods** and **taxable services** are supplies that are not exempt from value-added tax.

A **public body** is defined as a Department of State, a local authority or a body established by statute.

A number of terms – *ancillary supply*, *composite supply*, *individual supply*, *multiple supply* and *principal supply* – are defined for the purposes of the rules in *section 47* concerning the VAT treatment of goods and services that are sold together.

- A **multiple supply** is one where each of the items being sold together for one consideration is capable of being supplied independently in its own right. In such cases, each part of the supply is an **individual supply**, which is physically and economically dissociable from the other parts of the multiple supply. VAT applies to each of the individual supplies at the rate that would apply if they were sold separately.

- A **composite supply** is one where there is a **principal supply** together with one or more ancillary supplies, which are not physically and economically dissociable. An **ancillary supply** forms part of a composite supply and is only supplied in the context of a principal supply. In this case, VAT is chargeable at the rate applicable to the principal supply.

Exempt activities means a supply of goods or of services in respect of which, in accordance with *section 52*, a liability to tax does not arise. The term also includes certain supplies of immovable property on which value-added tax is not chargeable. (See *Part 11* for property rules.) Exempt activities are those listed in *Schedule 1*. Exempted activities may be distinguished from activities liable at the zero rate in that, while no liability to tax arises in either case, a right to deduction of prior-stage tax exists only in the case of activities liable at the zero rate.

The term **stock-in-trade** includes goods held for resale, materials incorporated in work-in-progress or held for incorporation in the manufacture of finished goods for resale, and consumable materials such as timber, paint and glass in decorating, etc. businesses. Persons who become liable for VAT can claim credit for VAT suffered on the stock-in-trade held at the start of the first taxable period – see deductibility rules in *Chapter 1 of Part 8*.

A number of terms – *assignment, capital goods, completed*, *development, freehold equivalent interest*, *joint option for taxation*, *landlord's option to tax* and *surrender* – are defined for the purposes of the VAT rules on immovable goods. **Immovable goods** means land, which under the Interpretation Act 2005 is defined to include tenements, hereditaments, houses and buildings, land covered by water and any estate, right or interest in or over land.

- An **assignment** of a leasehold interest in immovable property occurs where a lessee disposes (except by way of sub-lease) of a lease to a person other than the person who has the reversionary interest.

- **Capital goods** are immovable goods (or any parts thereof) that have been developed for VAT purposes. The special rules about capital goods and deductibility are in *Chapter 2 of Part 8*.

- **Completed** is defined for the purposes of immovable goods in *section 94* and means those goods that are developed to such a state that they can be used for the purposes for which they were designed and the utility services required for those purposes have been connected.

- **Development** has the same meaning as in section 639 of the Taxes Consolidation Act 1997 in relation to the charge of income tax on profits from developing land. It includes all construction, demolition, extension, alteration or reconstruction work in relation to a building and all engineering work relating to land which is designed to change materially the use to which the land is to be put. The term does not include repairs or decoration of buildings or the levelling or drainage of land for agricultural purposes.

- **Freehold equivalent interest** means an interest in immovable goods other than a freehold interest the transfer of which constitutes a supply of goods for VAT purposes.

- **Joint option for taxation** is where the supplier and the taxable person to whom the supply (which would otherwise be exempt) is made enter an agreement in writing to opt to have tax chargeable on that supply. (See *section 94*.)

- **Landlord's option to tax** means an option made by a landlord to tax a letting as provided for in *section 97*.

- Surrenders arising on interests created prior to 1 July 2008 are taxable if the lessee was entitled to deductibility on the acquisition or development of the property that is the subject of the lease. A **surrender** of a leasehold interest in immovable property occurs in the following circumstances:

  - Where a lease is surrendered to the person who has the reversionary interest in that lease;

  - On the abandonment of a lease by a lessee;

  - On recovery of the property by ejectment or forfeiture;

  - On the failure of a lessee to exercise an option to extend a lease. However, where an interest in property is created on or after 1 July 2008 and the lessee fails to exercise an option to extend the term of the lease, the resulting early return of the interest to the landlord does not constitute a surrender for VAT purposes.

The definition for **telecommunications services** is derived from Article 24(2) of the VAT Directive. In general, the services concerned are those that consist of making available the *means* of telecommunication (e.g. standard connection; subscription and installation transfer charges; provision of access to a network; the right to use a network of special lines; provision of access to global information networks etc.). Added value services, for which the customer pays a separate charge in addition to the telecommunications service access charge (for example, entertainment services), are not included in the definition.

Telephone card means a card (or a means other than money) that confers a right to access a telecommunications service and a right to receive other goods and services in certain circumstances. The definition provides that the customer pays for the telecommunications/other goods and services upfront. This effectively means that the telephone card is treated for tax purposes under the rules for vouchers – see *sections 43 and 43A*.

An **electronically supplied service** is defined for the purposes of the special scheme for electronic services in *section 91* and is derived from the indicative list of services provided for in Annex II of the VAT Directive. In general, the services concerned are those that are delivered over the Internet (or similar network) and are heavily dependent on information technology for their supply. These services include digitised products generally (such as software/upgrades of software), websites and services automatically generated from a computer (via the network) in response to specific data input by the customer. Services, other than those specifically mentioned in Annex II, which are automated and dependent on the Internet or an electronic network for their provision, are also included.

New means of transport means land vehicles, vessels and aircraft that meet certain defined criteria. The details are summarised in Table 1.1. The intra-Community acquisitions (ICAs) threshold, below which persons are not obliged to register for VAT in respect of their ICAs of goods, does not apply to new means of transport – see *Part 2*.

Table 1.1: Definition of 'new means of transport'

Transport type	**Specification (Transport for persons or goods)**	**'new'**
Motorised land vehicle	engine capacity over 48cc or power over 7.2kw.	6 months old or less, or travelled 6,000km or less
Vessel (not in *Schedule 2*)	length over 7.5m	3 months old or less, or sailed for 100 hours or less
Aircraft (not in *Schedule 2*)	take-off weight over 1,550kg	3 months old or less or flown for 40 hours or less.

The **VAT Directive** means Council Directive No. 2006/112/EC of 28 November 2006 on the common system of value-added tax. This is a recast (with new provisions) of Council Directive 77/388/EEC (the "6th Directive") and is the main body of EU legislation on VAT.

Subsection (2) provides for the interpretation of the term 'moneys received' in relation to VAT. The term includes any sums **(2)**

– lodged or credited to a person's account in a bank, building society or other financial concern, **(2)(a)**

- disposed of by way of set-off under an agreement (for example, received by another person (e.g. a solicitor) on behalf of a trader, or set off by a trader against an amount due in respect of another transaction, **(2)(b)**

- paid to Revenue by a third party to the person's account, under Revenue's powers of attachment, or **(2)(c)**

- deducted as Professional Services Withholding Tax (PSWT) or Relevant Contracts Tax (RCT). **(2)(d)**

The effect of this interpretation is to provide that, where a VAT-registered person accounts for tax on the moneys received basis (see *section 80*), liability will not be avoided if sums are lodged to the person's account under *paragraph (a)*, or if they cease to be due to him or her under *paragraphs (b) to (d)*. The moneys are deemed to have been received on the date of the lodgement or on the date the debt ceased to be due because of the offset, etc.

Subsection (3) implements Article 15(1) of the VAT Directive by deeming supplies of electricity, gas, heat or cooling energy, and so on to be supplies of goods for VAT purposes, and not supplies of services. See *section 31* for the place of supply rule for gas, electricity and cooling energy. **(3)**

Subsection (4) provides that a reference in the Act to the 'territory of a Member State' means territory as defined in the VAT Directive. Certain EU territories are treated as outside the Community and others are treated as within the Community for VAT purposes. The position is summarised in Table 1.2. **(4)**

<u>Table 1.2: Definition of Territory of a Member State</u>

Territories treated as outside the Community for VAT purposes
(a) Mount Athos (Greece); the Canary Islands; the French overseas departments; the Åland Islands; the Channel Islands. (These form part of the customs territory of the Community.)
(b) The island of Heligoland; the territory of Büsingen; Ceuta; Melilla; Livigno; Campione d'Italia; the Italian waters of Lake Lugano. (These do not form part of the customs territory of the Community.)
Territories treated as within the Community for VAT purposes
The Principality of Monaco (treated as part of France); the Isle of Man (treated as part of the United Kingdom); the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia (treated as part of Cyprus).

Where a territory is treated as outside the Community for VAT purposes, movements of goods to/from that territory are treated as exports/imports. Where a territory is treated as part of the Community for VAT purposes, then movements of goods to/from the territory are treated as intra-Community supplies and intra-Community acquisitions. The term ‘Community’ is also aligned with that used in the VAT Directive and is defined in *subsection (1)*.

Subsection (5) provides that references to the Value-Added Tax Acts in other legislation are to be construed as references to the VAT Consolidation Act 2010 and other Acts to be read with it. **(5)**

3. Charge of value-added tax

This section imposes the charge of value-added tax. The tax is chargeable, leviable and payable on the following transactions:

- Supplies for consideration of goods in the State by a taxable person (this is a person carrying on a business, as defined in *section 2*). **(a)**
- Imports of goods into the State. **(b)**
- Supplies for consideration of services in the State by a taxable person. **(c)**
- Intra-Community acquisitions for consideration of goods by an accountable person (this is a taxable person who is required to be registered for VAT – see *Part 2* for more details) in the State. **(d)**
- Intra-Community acquisitions for consideration of new motor vehicles and other new means of transport (defined in *section 2*) by all persons, whether accountable or otherwise. **(e)**

PART 2 – ACCOUNTABLE PERSONS

Overview

This Part, which contains 5 Chapters, contains the provisions relating to persons who are accountable for VAT. Accountability is a key concept in VAT, as persons who are accountable must register for the tax, submit tax returns and payments, keep records and comply with the provisions of the VATCA 2010.

Chapter 1 contains interpretation provisions (*section 4*). **Chapter 2** contains the main general rules. These cover provisions on persons who are accountable by default, persons who become accountable by election, cancellation of such elections and persons deemed not to be accountable (*sections 5 to 8*).

Persons who make intra-Community acquisitions of goods are accountable in certain circumstances, and **Chapter 3** outlines these rules (*sections 9 to 11*). **Chapter 4** covers services received from abroad - persons who receive certain services from abroad for business purposes (where the place of supply is deemed to be the State) are accountable persons in respect of such supplies (*section 12*).

Chapter 5 contains a number of supplementary provisions, covering accountability of the State and public bodies, rules on treating VAT groups as accountable, reverse charge rules under which the recipient of a supply becomes accountable and other special provisions (*sections 14 to 18*).

Chapter 1 - Interpretation

4. Definitions – Part 2

<u>Summary</u>

This section contains definitions, both for the purposes of this Part and for the purposes of the Act. Most of the definitions relate to farming and agriculture, and are derived from the VAT Directive. “Control” is also defined.

Details

The following terms are defined for the purposes of the Act: **(1)**

Agricultural produce, which covers goods produced by a farmer in the course of his or her agricultural production activities. These activities are defined in Annex VII of the VAT Directive (**Annex VII activity**). They are listed in *Schedule 4* and include crop production, stock farming and cultivation, forestry and fisheries.

An **agricultural service** – also defined in the VAT Directive (**Annex VIII service**) and reproduced in *Schedule 4* – covers planting, sowing, stock minding and other activities carried out for the purpose of agricultural production.

A **farmer** is a person who engages in an agricultural production activity and either exclusively supplies agricultural produce/services or who supplies such produce/services together with supplies of agricultural machinery that he/she has used, racehorse training (below the services threshold, defined in *section 2(1)*) or other goods and services below the relevant turnover thresholds.

The definition of **control** is taken from section 752(2) of the Taxes Consolidation Act 1997. This is defined for the purposes of *Part 2*. It is based, in the case of a body corporate, on the concept of a person being able to ensure, either directly or indirectly, that the affairs of the body corporate are conducted in accordance with his/her wishes. In the case of a partnership it is based on the concept of a person having a right to more than 50% of the income or assets of the partnership. **(2)**

Chapter 2 - General rules

5. Persons who are, or who may become, accountable persons

This section sets out the core rules on persons who are, or are likely to become, accountable persons for VAT purposes. It provides that an accountable person is a person in the business of selling taxable goods or services (in other words, goods or services that are not categorised as being exempt from VAT) in the State. Persons who make intra-Community acquisitions of goods and persons who receive certain services from abroad for business purposes (where the place of supply is deemed to be the State) are accountable persons. Persons who are jointly and severally liable for tax under *section 108C* are also accountable persons.

The section also specifies cases where suppliers that are not established in the State, but that make supplies into the State, are not accountable. These cases cover suppliers of goods installed in the State, gas and electricity suppliers and non-established subcontractors. In these cases, the accountable person is the person who receives the supply – this is provided for in other sections of *Part 2*.

Finally, the section provides for a situation where a person may be deemed to be an accountable person, where it is expected that he or she is likely to become accountable.

Details

A taxable person who supplies taxable goods or services (in other words, goods or services that are not VAT-exempt, as defined in *section 2(1)*) in the State is an accountable person and is accountable for, and liable to pay, the VAT charged on the supply. **(1)(a)**

Persons who are involved in intra-Community trade or are in receipt of services from abroad (professional and other services where the place of supply is the State) are also accountable persons. In addition, persons who are jointly and severally liable for tax under *section 108C* are accountable persons. **(1)(b)**

However, persons who do not have an establishment in the State but who supply and install goods in the State or persons who supply gas or electricity to public bodies and business customers in the State are not accountable persons. In addition, a non-established subcontractor who supplies construction services to a principal contractor is not an accountable person in respect of those services. **(1)(c)**

Subsection (2) deals with a situation where an unregistered trader whose turnover has been below the registration thresholds may be required to register for VAT because of an increase in that turnover. **(2)**

Example:

Where turnover of a small trader exceeds one-sixth of the appropriate annual limit in a taxable period and it is clear that the new situation is likely to continue he/she would be required to register from the commencement of the next taxable period. However, if a spike in turnover was exceptional – for example, because of the seasonal nature of his or her business – and it is unlikely that the relevant annual limit would be exceeded, the trader would not be required to register.

6. Persons not accountable persons unless they so elect

<u>Summary</u>

This section provides that some categories of persons – farmers, fishermen and persons supplying goods and services below the registration thresholds – are not accountable persons unless they elect to be so, and then only during the period that the election has effect. Such persons do not have to register for VAT.

<u>Details</u>

The provision is subject to rules about intra-Community acquisitions of goods (*Chapter 3 of this Part*) and services received from abroad (*Chapter 4 of this Part*); it is also subject to the provisions in relation to premises providers. (See notes on *section 17(1)*) **(1)**

- Farmers are not accountable, unless they so elect, if they fall into the following categories: **(1)(a)**
  - Annual turnover from the supply of agricultural services (other than insemination services, stock minding or stock rearing) does not exceed the services threshold; **(1)(a)(i)**
  - Annual turnover from the supply of bovine semen does not exceed the goods threshold (certain sales are excluded in calculating the figure – see notes on *subsection (2)(a)* below); **(1)(a)(ii)**
  - Annual turnover from the supply of horticultural-type products (e.g. nursery stock) as specified in *Schedule 3* to private individuals does not exceed the goods threshold; **(1)(a)(iii)**
  - Annual turnover from a combination of supplies of agricultural services and bovine semen/retail horticultural stock (all as defined above) does not exceed the services threshold; **(1)(a)(iv)**
  - Annual turnover from a combination of supplies of bovine semen and retail horticultural stock (as defined above) does not exceed the goods threshold. **(1)(a)(v)**
- Fishermen are not accountable, unless they so elect, if their supplies of taxable goods and services fall into the following categories: **(1)(b)**
  - Fish, caught in the course of their sea-fishing business, supplied to accountable persons and traders not established in Ireland who qualify for VAT refunds under *section 102*. **(1)(b)(i)**

- Supplies of fish (as defined above) together with machinery, etc. that was used in their sea-fishing business or other goods/services below the relevant registration limits. **(1)(b)(ii)**

– Persons whose annual turnover from supplies of goods (excluding mail order goods supplied into Ireland under the distance sales rules in *section 30*) and services does not exceed the goods threshold are not accountable unless they so elect. For the provision to apply, at least 90% of that turnover must be derived from the supply of taxable goods, other than goods liable at the reduced or standard VAT rate produced from zero-rated raw materials. **(1)(c)**

– Persons not covered by paragraphs (a), (b) or (c) whose annual turnover from supplies of goods and services does not exceed the services threshold are not accountable unless they so elect. (For example, the registration threshold is €37,500 for persons supplying goods liable at 13.5% or 23% that are made from zero-rated materials.) **(1)(d)**

Subsections (2) and (3) qualify the provisions in *subsection (1)*, as follows:

In calculating the turnover figure for bovine semen supplies, sales between farmers that are licensed as Artificial Insemination (A.I.) stations and sales by farmers to a VAT-registered subsidiary are excluded. **(2)(a)**

Connected persons do not gain any advantage from splitting their business activities into business units which can trade below the goods/services thresholds in order to avoid registration, as the total consideration is taken into account. **(2)(b)**

Consideration is aggregated in the same way in relation to farmers supplying agricultural services or horticultural goods or livestock semen. **(2)(c)**

The registration threshold rules do not apply in respect of services received from abroad under the reverse charge rules. These recipients must register for VAT in the State, regardless of the value of the supplies. **(2)(d)**

The provisions in relation to fishermen and the goods and services threshold rules in *subsection (1)* do not apply where the person making supplies in the State is established outside the State. **(3)**

7. Treatment of persons as not accountable

This section provides that Revenue may cancel a VAT registration where the trader is no longer an accountable person. The implication of Revenue cancelling a VAT registration, as opposed to the trader cancelling an election to register, is that the trader does not have to repay any excess tax refunded to him or her during the period of the registration. The section applies where a person is below the registration threshold and is not an election case.

Note that persons carrying on only exempt activities or persons carrying on activities otherwise than in the course or furtherance of business may not register for VAT. Where persons that are otherwise exempt are required to register in respect of intra-Community acquisitions or received services from abroad, etc., they do not get any deductibility for VAT incurred on their purchases.

8. Cancellation of election

<u>Summary</u>

This section provides for the cancellation of VAT registrations by persons who had elected to be accountable, and (in some cases) for the payment to Revenue of clawback amounts in respect of excess repayments made over the period for which the election was in place.

Under the general cancellation of registration rule, the trader pays to Revenue any excess of VAT refunded to him or her over the tax paid for the taxable periods that the election had effect, or 3 years prior to the date of application for cancellation, whichever is the lesser.

There is a separate cancellation provision for elections in respect of the letting out of holiday accommodation. This applies to holiday homes acquired before 1 July 2008 (when the new property rules - see *Chapter 2 of Part 8 and Part 11* – came into effect). It provides for the payment of a cancellation amount to Revenue, which is calculated on the basis of the amount of VAT deductible on the holiday property and the number of years for which the property is let. No cancellation amount is payable where the property is let for 10 years or more.

Details

Subsection (1) covers the basic cancellation of election rule. The conditions under which such cancellation can be made are set out in Regulation 3 of the VAT Regulations 2010. The Regulation stipulates that on cancellation of an election a "clawback position" operates in respect of any net VAT repaid to the trader for either the entire period for which the election was in place or the 3 years prior to the VAT period in which cancellation is requested, whichever is the lesser. For example, a trader who elects to register and cancels the election 5 years later must repay to Revenue any net VAT repaid to him/her during the previous 3 years. **(1)**

The formula for calculating the amount of VAT to be clawed back is —

$$\underline{(A + B)} - C$$

where A is the amount of VAT repaid to the trader for the period the election was in place in respect of the supply of goods or services (other than the supply of holiday accommodation), B is the amount of VAT deductible in respect of intra-Community acquisitions and C is the net VAT paid by the trader in relation to the supply of those goods or services (other than the supply of holiday accommodation) in the same period.

Where the trader paid more to Revenue than he/she was refunded, there is no clawback.

Subsection (2) covers the special case of the cancellation of the registration of a person who elected to be an accountable person in respect of the letting of holiday accommodation. Regulation 3 of the VAT Regulations 2010 applies. Such persons must, in certain circumstances, pay a 'cancellation amount' to Revenue when they cancel their election to register. **(2)(a)**

Paragraph (b)(i) provides for the calculation of an "adjustment amount" in respect of each supply of property for which tax was deductible. The cancellation amount is the sum of these adjustment amounts. **(2)(b)(i)**

The formula for establishing the adjustment amount is — **(2)(b)(ii)**

$$\frac{D \times (10 - E)}{10}$$

where D is the amount of VAT deductible on the property used for the holiday lettings (including VAT that would have been deductible but for the transfer of business rule in *section 20(2)(c)*), and E is the number of full years the property was used for the holiday lettings.

A full year, as used in the formula, is defined as being a continuous period of 12 months. **(2)(c)**

Persons who cancel their election after short periods of time are liable to repay proportionately more VAT than those who cancel after long periods. For example, if A = 100 and the property is let for 4 years, the adjustment amount is A x 6/10 = 60. However, if A = 100 and the property is let for 9 years, the adjustment amount is A x 1/10 = 10.

No cancellation amount is payable if the length of time involved exceeds 10 years.

The subsection does not apply to holiday accommodation acquired or developed after 1 July 2008. **(2)(d)**

Chapter 3 - Rules for intra-Community acquisitions

9. Intra-Community acquisitions and accountable persons

Summary

This section sets out the main rules under which persons making intra-Community acquisitions (ICAs) of goods are accountable for VAT. The general provision is that a threshold of €41,000 applies for persons making ICAs of goods in the course of their business, above which persons are accountable and liable to pay tax. Persons making ICAs below the threshold may opt to register for VAT if they so wish. However, there is no threshold in respect of goods that are subject to excise duty or in respect of ICAs of new means of transport.

It may be noted that exempt persons and non-taxable entities that elect to register in respect of ICAs do not get VAT deduction rights as a result.

Farmers, fishermen and racehorse trainers who are accountable in respect of intra-Community acquisitions, because their turnover in any continuous period of 12 months from ICAs exceeds the €41,000 threshold, are obliged to register for VAT but may "ring fence" the registration to the ICAs (and any received services from abroad).

The general rules on intra-Community acquisitions and the €41K threshold are subject to other rules on accountable persons and registration. For example, a person who is accountable because his or her taxable supplies in the State exceed the registration threshold for goods, or by virtue of the receipt of services from abroad that are deemed to be supplied in the State, is obliged to register for VAT in any event.

Details

A person who engages in the intra-Community acquisition of goods "in the course or furtherance of business" is an accountable person and liable to pay the tax. **(1)**

There is an intra-Community acquisitions (ICAs) annual threshold of €41,000. A person is not an accountable person (unless he/she elects to be so) if his/her intra-Community acquisitions do not exceed this amount. The threshold provision does not apply to ICAs of new means of transport or to goods subject to excise duty. It may be noted that persons accountable only in respect of ICAs (for example, an exempt business) must register and account for the VAT but are not entitled to deduct it. The subsection does not apply if the person is accountable in respect of supplies of other goods and services. **(2)**

The threshold rule for intra-Community acquisitions does not apply to persons who are accountable in the normal way under *section 5(1)*, unless they are persons covered by the election rules in *section 6(1).* For example, a person making taxable supplies in the State who engages in intra-Community acquisitions below the annual ICA threshold amount must register for VAT unless his/her supplies are below the registration threshold. **(3)**

A farmer or fisherman who is an accountable person – either because he/she makes intra-Community acquisitions of goods over the €41,000 threshold, or because he/she receives supplies of goods from non-established suppliers under *section 10* – is deemed to be accountable only in respect of **(4), (5)**

(a) intra-Community acquisitions made by him/her, and

(b) services received by him/her under reverse charge rules where the supplier is established outside the State, and services provided in his/her capacity as a premises provider under *section 17(1).*

This "ring fence" provision means, for example, that a flat-rate farmer can retain his/her flat-rate status. The farmer or fisherman may, however, elect that this provision does not apply to him/her.

Subsection (6) covers the same concept as *subsection (4)* above, in respect of farmers providing racehorse training services (see *section 17(2)*). A racehorse trainer who is an accountable person – either because he/she makes intra-Community acquisitions of goods over the €41,000 threshold, or because he/she receives supplies of goods from non-established suppliers under *section 10* – is deemed to be accountable only in respect of **(6)**

(a) intra-Community acquisitions made by him/her,

(b) racehorse training services he/she supplies, and

(c) services received by him/her under reverse charge rules where the supplier is established outside the State, and services provided in his/her capacity as a premises provider under *section 17(1)*.

The racehorse trainer may elect that this provision does not apply to him/her. In other words, instead of being accountable only in respect of supplies listed under *paragraphs (a) to (c)* in *subsection (6)*, he or she can elect to register in respect of all supplies. **(7)**

10. Certain supplies of goods – supplier not established in the State

Summary

This section provides for two situations where a recipient in the State – either a taxable person carrying on a business in the State or a public body – is accountable in respect of supplies of goods by persons not established in the State. The supplies that are covered are gas and electricity supplies and goods that are installed in the State. *Section 5(1)* provides that the non-established supplier is not accountable in respect of these supplies.

Details

Where natural gas or electricity is supplied by a person not established in the State to a public body (defined in *section 2(1)*) or to a taxable person carrying on a business in the State then the recipient of the goods is deemed to be an accountable person and is liable for the VAT due. **(1)**

Where goods are installed or assembled in the State by or on behalf of a non-established person and where the supply is to a public body (defined in *section 2(1)*) or to a taxable person carrying on a business in the State, then the recipient of the goods is deemed to be an accountable person and is liable for the VAT due. **(2)**

Example:

A supplier of studio equipment has a contractual agreement to supply, and install, equipment; the installation charge is included in the price of the goods. The contract is for the supply of goods (being equipment or machinery), which includes installation and/or assembly as part of the supply. The supply with installation or assembly of strong rooms, exhibition stands, moveable shop counters, generators/transformers and computer systems may also qualify.

The provision does not apply when the supply is a supply of services. This could arise where the value of the goods does not exceed two-thirds of the total contract price, including the installation and assembly element. In these circumstances, the non-established trader is obliged to register in respect of these services and account for VAT in the State in the normal way. The foreign supplier also continues to be required to register and account for VAT on the goods where the recipient is a private individual.

11. Other provisions in relation to goods

Summary

This section covers 3 provisions in relation to intra-Community acquisitions (ICAs).

It provides that persons who are accountable persons solely because they made an ICA of new means of transport or of excisable products are not treated as otherwise accountable, provided they pay the VAT that is due on the supply. This rule is necessary because persons are always accountable in respect of ICAs of new vehicles or excisable goods, regardless of the value of the supply, as the ICA threshold (€41,000) does not apply in these cases.

The section also provides that foreign traders do not have to register in respect of ICAs and subsequent supplies under triangulation arrangements.

Details

Subsection (1) deals with intra-Community acquisitions of new means of transport, which are defined in *section 2(1).* An intra-Community acquisition of a new means of transport in the State is always taxable in the State. This means that any person (including a private individual) who makes such an intra-Community acquisition becomes an accountable person. **(1)**

However, where a person has become an accountable person only as a result of the intra-Community acquisition of a new means of transport, this subsection provides that, once the VAT on the acquisition is paid (in accordance with *section 79(2)* for cars and *section 79(3)* for boats and planes), the person will not be required to comply with the other obligations of an accountable person under the Act.

> *(Under section 79(2), the VAT payable on a new motor vehicle must be paid at the time of registration of the vehicle in the State. Under Regulation 28 of the VAT Regulations 2010 the VAT on the intra-Community acquisition of a new boat/plane must be paid to Revenue within 3 days of bringing the aircraft or vessel into the State.)*

Subsection (2) covers acquisitions of excisable goods. An intra-Community acquisition of excisable goods in the State is always taxable in the State, and the €41,000 threshold for ICAs does not apply. This means that any person who makes such an intra-Community acquisition becomes an accountable person. **(2)**

However, where a person has become an accountable person only as a result of the intra-Community acquisition of excisable products, this subsection provides that, once the VAT on the acquisition is paid (in accordance with *section 79(4)*), he or she will not be required to comply with the other obligations of an accountable person under the Act, such as registration and submitting returns.

> *(Under section 79(4), the VAT will be payable on the goods at the same time as the excise duty is being paid, and the recovery/collection rules that apply to excise also apply to the VAT.)*

(Note that the duty suspension arrangements under the special scheme in *section 92* do not apply to ICAs by persons who are only accountable because of the ICA.)

Subsection (3) is linked in with the simplified arrangements that apply in triangulation cases. It covers the situation where a trader established in another Member State has made an intra-Community acquisition and a subsequent supply in the State. Normally, such a trader would be an accountable person and would be obliged to register in the State. However, provided the requirements of *section 23* apply, the trader will not be regarded as an accountable person unless he/she opts to register for VAT in the State. **(3)**

Chapter 4 - Services supplied in the State by persons established outside the State

12. Services received from abroad and accountable persons

Summary

This section sets out the main rules under which persons receiving services from abroad, where the place of supply is deemed to be the State, are accountable for VAT. The general provision is that persons receiving such services in the course of their business are accountable and liable to pay tax on the "reverse charge" basis. There is no turnover threshold for the receipt from abroad of these services for business purposes – liability arises on all such supplies. The received services that are subject to the rule are outlined in *Chapter 3 of Part 4*.

Farmers, fishermen and racehorse trainers who are accountable in respect of received services under this section are obliged to register for VAT, but may "ring fence" the registration to the services deemed to be supplied in the State, other services received from abroad and any intra-Community acquisitions.

Details

Persons in business in the State, or persons registered for VAT in the State, who receive certain services for business purposes from a supplier established outside the State are accountable for, and liable to pay, the tax due on a reverse charge basis. The services covered by this provision are those that are deemed to be supplied in the State under "place of supply rules" in *Chapter 3 of Part 4* and include consultancy services, advertising services, etc. **(1)**

These services are deemed to be supplied in the State by the recipient, who is an accountable person that is liable to pay the tax. There is no turnover threshold for the receipt from abroad of these types of services for business purposes – liability arises on all such supplies.

There is a special rule in *subsection (2)* for persons in business in the State or public bodies – defined in *section 2(1)* to cover Departments of State, local authorities and bodies established by statute – who receive services in connection with immovable goods (other than holiday accommodation, telecommunications services, broadcasting services or electronically supplied services, where supplied with the provision of holiday accommodation, and construction services) that are deemed to be supplied in the State under the place of supply rules. **(2)**

The place of supply for services connected with immovable goods is the place where the goods are located. Specific arrangements for a reverse charge are in place under which customers receiving such services from suppliers who do not have an establishment in the State are accountable for, and liable to pay, the tax due on a reverse charge basis. However, the exceptions mentioned in the paragraph above relating to the provision of holiday accommodation, the supply of telecommunications services, radio or television broadcasting services or electronically supplied services together with accommodation, as well as certain construction services mean that the reverse charge does not apply to them thus requiring the non-established supplier to register and account for VAT in the State if the place of supply is the State.

A farmer or fisherman who is an accountable person because he/she receives services from abroad under this section, or who is an accountable person in his/her capacity as a premises provider (*section 17(1))* – is deemed to be accountable only in respect of **(3), (4)**

- intra-Community acquisitions made by him/her, and
- services received by him/her as above where the supplier is established outside the State, and services provided in his/her capacity as a premises provider under *section 17(1)*.

This "ring fencing" provision means, for example, that a flat-rate farmer can retain his/her flat-rate status. The farmer or fisherman may elect that this provision does not apply to him/her.

Subsection (5) covers the same concept as *subsection (3)* above, in respect of farmers providing racehorse training services (see notes on *section 17(2)*): A racehorse trainer who is an accountable person – either because he/she receives services from non-established traders or in his capacity as a premises provider – is deemed to be accountable only in respect of **(5), (6)**

- intra-Community acquisitions made by him/her,
- racehorse training services he/she supplies, and
- services received by him/her where the supplier is established outside the State, and services provided in his/her capacity as a premises provider under *section 17(1)*.

The racehorse trainer may elect that this provision does not apply to him/her.

13. Certain supplies of services – supplier not established in the State[1]

Chapter 5 - Supplementary provisions

14. The State and public bodies

Summary

This section deals with the VAT position of the State and public bodies. Since 1 July 2010, the State or public bodies – which are defined to cover local authorities, Government departments and statutory bodies – are taxable if they provide services outside their regulatory function or if they engage (on a more than negligible scale) in specific activities that are listed in Annex I of the VAT Directive or where there is likely to be a distortion of competition.

These rules, insofar as they relate to supplies of community facilities (defined as sports facilities (other than golf) and the hiring of community halls and suchlike to certain non-profit making bodies) are subject to commencement by order of the Minister for Finance.

[1] Deleted by Regulation 3 of S.I. No. 612 of 2010, (w.e.f. 1 January 2011).

Details

For the purposes of the intra-Community acquisition rules (see *section 9* and *section 10*), where a public body effects an ICA in the State, the acquisition is deemed to have been effected in the course or furtherance of business. This means that such bodies have to register and account for VAT where their intra-Community acquisitions exceed the €41,000 threshold in a 12-month period. **(1)**

Subsection (2) provides that (subject to *subsection (3)*) the State and public bodies are treated as taxable persons where they carry out activities or transactions outside of their regulatory functions, where there is a distortion of competition, or where the activities are listed in *Schedule 6* and are carried out on a more than negligible scale. *Schedule 6* reproduces Annex I of the VAT Directive which lists activities such as telecommunications services, passenger transport and gas/electricity supply. Bodies governed by public law are regarded as taxable under the VAT Directive when they engage (other than on a small scale) in activities on the list. **(2)**

This subsection comes into operation on 1 January 2013 in so far as it applies to the supply of 'community facilities' within the meaning of subsection (3)(*a*)(i) i.e. the provision of facilities for taking part in sport or physical education other than golf.

Community facilities are defined as facilities for taking part in, or services closely related to the provision of, sporting or physical education activities (other than golf) and the hiring of community halls and suchlike to non-profit making sporting, cultural, social and community organisations. **(3)(a)**

The provisions of *subsection (2)*, in so far as they relate to the supply by public bodies of community facilities, are subject to commencement by Ministerial Order.[2] **(3)(b)**

Paragraph (c) preserves the position that the State and local authorities are not accountable persons with respect to the supply by them of a community facility until a commencement order under *paragraph (b)* is made. **(3)(c)**

[2] Commencement Order S.I. No. 392 of 2012, w.e.f. 1 January 2013.

15. VAT groups

Summary

This section allows Revenue to deem persons (at least one of whom is a taxable person) who are established in the State and who are closely bound by financial, economic and organisational links to be a single taxable person referred to as a 'group'. Under such arrangements, one person or company in the group is responsible for complying with the group's VAT requirements, such as lodging returns and payments with Revenue. However, each member of the group is jointly and severally liable in the event of non-compliance. Members of a VAT group do not have to issue VAT invoices in respect of inter-group transactions (except in the case of certain property transactions).

Details

Revenue may deem persons (at least one of whom is a taxable person) who are established in the State and who are closely bound by financial, economic and organisational links to be a single taxable person referred to as a 'group'. One of the persons in the group (commonly referred to as the remitter) is notified by Revenue that he/she is responsible for complying with the provisions of the Act for the group. Each person in a VAT group is held to be jointly and severally liable to comply with all the statutory provisions of the tax (including provisions requiring payment of the tax). VAT registration rules (see *section 65*) continue to apply to each group member. **(1)**

The group rules do not apply in certain cases – **(2)**

- The supply of immovable goods between group members is excluded from group treatment. **(2)(a)**

- Also, notwithstanding the fact that the traders in the group are treated as a single taxable person for VAT purposes, the individual traders are obliged to issue invoices under *Chapter 2 of Part 9* for supplies made by them (apart from the case of sales within the group). **(2)(b)**

- Traders in a group must also furnish VIES statements under *section 82 or 83* (if they make intra-Community supplies). The VIES return should not be completed on behalf of group members under the group remitting number. However, the group remitter may complete individual VIES returns on behalf of group members provided each return relates to the VAT number of the individual group member. Group members making intra-Community acquisitions from other Member States also use their own individual VAT number, rather than the group number. **(2)(c)**

– The transfer of ownership of goods under the transfer of business rules in *section 20(2)(c)* is also excluded from group treatment, except where each group member is an accountable person. **(2)(d)**

Revenue may cancel a group registration (for example, if they are satisfied that it would lead or has led to a loss of revenue), by notifying each group member in writing. **(3)**

The cancellation of a group registration is without prejudice to the tax liabilities of the group members. **(4)**

In cases where an exempt short term letting of immovable goods occurs within a VAT group and the lessor had been entitled to deductibility on his or her acquisition or development of those immovable goods, that exempt letting is deemed to occur when either the lessor or lessee leaves the group or the group breaks up, and a charge to VAT will arise at that time. **(5), (6)**

There is provision for the making of regulations where necessary for the purposes of this section **(7)**

16. Reverse charge for certain supplies

Summary

This section provides for various situations where reverse charge provisions apply. Under the reverse charge mechanism, the obligation to pay VAT is shifted from the person making the supply to the person to whom the supply is made. The customer is made accountable for, and liable to pay, the tax due in respect of the supply. While the reverse charge mechanism generally operates in relation to services supplied from abroad to taxable persons in the State, this section also applies the mechanism to domestic supplies in the case of NAMA property, greenhouse gas allowances, certain construction services, scrap metal, wholesale supplies of gas or electricity and gas or electricity certificates. In these cases, the recipient of the supply is the accountable person and liable to pay the tax under the reverse charge, as follows:

– Where ownership of goods is transferred by way of a vesting order to the National Assets Management Agency (NAMA), NAMA is made accountable and liable.

– Where greenhouse gas emission allowances are supplied by one business to another business in the State, the recipient in the State is made accountable and liable.

– Where construction services are supplied by a sub-contactor to a principal contractor, the principal contractor is made accountable and liable.

– Where construction services are supplied by an accountable person to a connected person who is a taxable person, the connected person is made accountable and liable.

– Where scrap metal is supplied by taxable persons carrying on a business in the State, the recipient in the State is made accountable and liable.

– Where gas or electricity is supplied by a taxable person in the State, to a taxable dealer carrying on a business in the State, the taxable dealer is made accountable and liable.

– Where a gas or electricity certificate is supplied by a taxable person carrying on a business in the State, to another taxable person carrying on a business in the State, the recipient of the gas or electricity certificate is made accountable and liable.

Details

Subsection (1) provides for a reverse charge mechanism to apply when a supply of goods, which has arisen by virtue of a Vesting Order been made under the National Assets Management Agency Act 2009, occurs. The subsection provides that the National Assets Management Agency (NAMA) and any NAMA entity is the person liable to account for the VAT on that supply on the reverse charge basis. A NAMA entity is a person or body of persons, which is connected to NAMA within the meaning of *section 97*. **(1)**

Subsection (2) provides for a reverse charge mechanism to apply, with effect from 8 April 2010, where a taxable person who carries on a business in the State receives greenhouse gas emission allowances from another taxable person who carries on a business in the State. The recipient is the accountable person liable to pay the tax and the supplier is not accountable or liable. Greenhouse gas emission allowances are defined in the subsection and are the allowances – sometimes called carbon credits – that are tradable under the EU Emissions Trading Scheme. See *section 66* for information on the documentation that is required to be issued by the supplier to the customer in these cases. **(2)**

A reverse charge for construction services supplied by a subcontractor to a principal applies with effect from 1 September 2008. This subsection provides that, where construction services (which would be within the scope of Relevant Contracts Tax (RCT) under Chapter 2 of Part 18 of the Taxes Consolidation Act 1997) are supplied by a subcontractor to a principal contractor, it is the principal contractor who must account for the VAT on the supply on a reverse charge basis and not the subcontractor. This is also the case where the subcontractor and principal contractor are both established in the State. This reverse charge provision only applies to principal contractors who are involved in construction and not to those involved in the other operations subject to RCT, i.e. meat processing or wood processing. **(3)**

See *section 66* for information on the documentation that is required to be issued by the subcontractor to the principal.

Subsection (4) provides for a reverse charge mechanism to apply, with effect from 1 May 2011, where a taxable person who carries on a business in the State receives scrap metal from another taxable person who carries on a business in the State. The recipient is the accountable person liable to pay the tax and the supplier is not accountable or liable. Scrap metal is defined in the subsection. **(4)**

Subsection (5) provides for a reverse charge mechanism to apply from 1 May 2012, where an accountable person carrying on a business in the State supplies construction services to a connected person (as defined in section 97(3)) in the course or furtherance of business. The recipient of the construction services is the accountable person liable to pay the tax and the supplier is not accountable or liable. 'Construction work' is defined in the subsection. **(5)**

Subsection (6) provides for a reverse charge mechanism to apply from 1 January 2016, where a taxable dealer (within the meaning of section 31(1)(a)) receives gas or electricity from a taxable person who carries on a business in the State. The recipient is the accountable person liable to pay the tax and the supplier is not accountable or liable. 'Gas' is defined in the subsection. **(6)**

Subsection (7) provides for a reverse charge mechanism to apply from 1 January 2016, where a taxable person who carries on a business in the State receives a gas or an electricity certificate from another taxable person who carries on a business in the State. The recipient is the accountable person liable to pay the tax and the supplier is not accountable or liable. 'A gas or an electricity certificate' is defined in the subsection. **(7)**

17. Other provisions in relation to services

Summary

This section covers rules in relation to persons who may be deemed to be accountable in respect of supplies of services. Two distinct cases are covered.

- Premises providers who allow their land to be used by non-established mobile traders for periods of less than 28 days, or who allow non-established promoters to supply cultural-type events on their land, may be deemed to be accountable and liable to pay the tax due on the supplies made by the mobile trader or promoter in cases where the provider fails to supply certain timely information to Revenue about the events.

- Farmers who supply racehorse-training services above the annual services threshold are deemed to be accountable in respect of such supplies (and certain other supplies from abroad and intra-Community acquisitions, if applicable).

Details

A 'premises provider' is defined as a person who owns, occupies or controls land. **(1)(a)**

A premises provider must furnish certain details – names, addresses, venue dates, etc. – to Revenue if he/she allows a non-established mobile trader to supply goods on his or her premises for periods of less than 28 consecutive days. The details specified must be furnished not later than 14 days before the mobile trader is allowed to supply the goods. **(1)(b)**

A premises provider must furnish certain details – names, addresses, venue dates, etc. – to Revenue if he/she allows a non-established promoter to supply cultural, artistic, entertainment or similar services on those premises and where the place of supply of those services is where the event actually takes place. The details specified must be furnished not later than 14 days before the event or performance is scheduled to begin. **(1)(c)**

Where the premises provider fails to furnish the details required under (b) or (c) above, he/she may be made jointly and severally liable for the VAT with the mobile trader or the promoter, as appropriate. The premises provider is made accountable and liable, but not if the mobile trader/promoter pays the tax. **(1)(d)**

Where a person, who would otherwise be a farmer, is obliged to register for VAT because his/her supplies of horse training services are in excess of the services threshold (defined in *section 2(1)*) he/she will be an accountable person in respect of the horse training services only (and also in respect of any intra-Community acquisitions and certain services from abroad received by him/her) and, unless he/she elects otherwise, will retain his/her unregistered status as a farmer in respect of the supply of agricultural goods and services. **(2)**

18. Distortion of competition, deemed taxable supplies, etc.

<u>Summary</u>

This is the final section in *Part 2*. It contains miscellaneous provisions in relation to accountable persons.

– It sets out the rules under which Revenue may make a determination providing that normally exempt sports services or educational activities are subject to VAT.

– It provides that clubs selling goods and services to their members are liable to VAT on the receipts, where the registration thresholds are exceeded.

– It establishes that the licensee is liable to VAT on the amounts received in connection with a dance held on premises licensed to sell alcohol.

<u>Details</u>

Subsection (1) provides that Revenue is required to make a determination subjecting normally exempt sports services or educational activities to VAT where the relevant turnover exceeds the services threshold of €37,500 per annum and they are satisfied that— **(1)(a)**

– The exemption of the service puts a commercial rival at a competitive disadvantage, or

– The service is actually a commercial one operating behind a 'not-for-profit' facade.

The determination, which is made by an authorised Revenue officer, deems—

(a) the service supplied to be a business as normally defined for VAT,

(b) the person supplying the service to be an accountable person for the purposes of VAT, and

(c) the supplies to be taxable at the appropriate rate of VAT.

Revenue must issue a notice in writing of any determination to the person concerned. **(1)(b)**

Where taxation is being imposed, it may not commence any sooner than the start of the next VAT period following the issue of the notice. **(1)(c)**

Revenue may, where they are satisfied that the relevant distortion of competition no longer exists, cancel any determination made under this subsection. A notice must be issued in writing of the cancellation of a determination to the person concerned, and the cancellation applies from the start of the next taxable period following the issue of the notice. **(1)(d)**

Under *subsection (2)*, clubs or other similar organisations, which sell goods or services to their members, are deemed to be making supplies in the course or furtherance of business. This means they are liable to VAT on the receipts from those activities, if they exceed the limits for registration. However, their membership subscriptions will normally be exempt from tax. **(2)**

Subsection (3) contains a special provision in relation to the treatment of dances held on premises licensed for the sale of intoxicating liquor. The licensee is deemed to have received the admission charges and is liable to account for VAT on these receipts. **(3)**

The subsection applies only to dances held on licensed premises. Persons organising dances on premises that are not licensed are subject to the normal VAT rules, under which the promoter is obliged to register and account for VAT if his/her annual turnover exceeds the services threshold, which is defined in section 2(1).

PART 3 – TAXABLE TRANSACTIONS

Overview

This Part, which contains 3 Chapters, sets out the rules relating to taxable transactions for VAT purposes. A transaction has to be taxable in order for VAT to apply.

Chapter 1 deals with the supply of goods. It covers definitions of the supply of goods, transfers and disposals that are considered not to be supplies of goods, rules for supplies where there is no consideration as well as a number of special cases, including the concept of a self-supply (*sections 19 to 23*).

Chapter 2 covers the meaning of intra-Community acquisition of goods (*section 24*). In the EU Single Market, VAT is accounted for on sales of goods between traders in different Member States by a system of intra-Community supplies and acquisitions of goods. The supplies are zero-rated in the Member State of origin and the tax is accounted for by the VAT-registered accountable person in the Member State of destination.

Chapter 3 deals with the supply of services. It includes definitions of the supply of services, self-supplies of services, transfers deemed not to be supplies of services and other special rules (*sections 25 to 28*).

Chapter 1 - Supply of goods

19. Meaning of supply of goods

Summary

This section defines the meaning of supply of goods. Generally speaking, a taxable supply for VAT purposes means the normal transfer of ownership of goods from one person to another. This includes supplies that are liable at the zero rate of VAT.

Details

Subsection (1) defines a supply of goods for VAT purposes as follows: **(1)**

– The transfer of ownership of goods by agreement, including where the transfer of ownership is to a finance company of goods which are to be handed over to a person under a hire-purchase or credit-sale arrangement. **(1)(a)**

- The sale of movable goods on a commission basis by an auctioneer or agent. **(1)(b)**

- The actual handing over of goods to a person under a hire-purchase agreement, even though ownership of the goods will not transfer to the purchaser until the terms of the contract have been fulfilled. Where the hire purchase agreement is financed by a finance company then the supply is made by the finance company. (Note that, in accordance with *section 20(1)*, the legal transfer of ownership of the goods is not a supply of goods for VAT purposes.) **(1)(c)**

- The transfer of ownership where the goods are acquired compulsorily by the State or by a local authority or are seized from a person by a sheriff or other person acting under statutory authority. This treatment achieves the same result as if the person sold the goods in question and paid the sheriff out of the proceeds. **(1)(e)**

- The diversion of movable goods from a taxable business purpose to a non-taxable or exempt business purpose, commonly referred to as a self-supply. **(1)(f)**

- The diversion of goods, apart from immovable property under subsection (1A), from a taxable business use to a non-business (private) use or their disposal free of charge by the trader. This is also commonly referred to as a self-supply. This provision ensures that goods acquired VAT-free as part of the purchase of a business (under the transfer of business rules) do not escape the self-supply charge if they are subsequently diverted to private use, or given away free of charge (for example, distributed as gifts). **(1)(g)**

  Example: A self-supply occurs when an accountable person diverts goods for which he/she is entitled to a VAT deduction to an exempt (*subsection (1)(f)*) or a private (*subsection (1)(g)*) use. The taxable amount for such a supply is provided for in *section 42* and is the cost. Suppose a trader takes a computer from stock-in-trade for personal use:

  - Cost of computer, VAT inclusive = €1,230
  - VAT element at 23% = €230
  - Trader accounts for the self-supply by increasing his/her ‘VAT on sales” figure by €230 in the VAT return for the period in which the self-supply occurred.

  In this case, the supplier becomes the final customer and must suffer the VAT on the supply, in the same way as other final customers. Businesses do this by accounting for VAT on the cost to themselves of the goods (excluding the VAT).

– The transfer of goods from a business in the State to that business in another Member State or the transfer of a new means of transport by a person in the State to the territory of another Member State. These goods will then be an intra-Community acquisition on arrival in the other Member State and liable to tax there. However, if the goods are transferred for the following purposes the transfer is not a supply in the State: **(1)(h)**

  - Goods that are installed or assembled in the other Member State by or on behalf of the supplier. Goods sold on board vessels, aircraft or trains on intra-Community routes. Goods taxable in another Member State under distance sales rules. **(1)(h)(i)**

  - Goods transferred in circumstances outlined in *Schedule 2*, covering intra-Community supply or export from another Member State; supply, modification, repair, maintenance, fuelling and provisioning, and hiring of certain sea-going vessels or aircraft (and their equipment) operating chiefly on international routes; gold transferred to the Central Bank. **(1)(h)(ii)**

  - Goods transferred to another Member State for the purpose of having a service (including contract work) carried out on them or being assigned a valuation if the goods are returned to the transferor in the State after the service or valuation is carried out. *Because these are not supplies for VAT purposes, they are not recorded on the VIES return – see Chapter 6 of Part 9. However, if the goods are not returned to Ireland after the service, the status of the transaction changes and the person in Ireland will be deemed to have made a taxable transfer (i.e. a supply to the Member State where the service is physically performed) of the goods in the condition in which they left Ireland.* **(1)(h)(iii)**

  - The transfer of goods with a view to their temporary use in another Member State related to the supply of a service there by the person who sent the goods. **(1)(h)(iv)**

  - The transfer of goods with a view to their temporary use for under 2 years in another Member State, where the temporary importation into that other Member State of the same goods would be exempt from import duties. *(An example would be goods temporarily brought in for an exhibition from outside the Community.)* **(1)(h)(v)**

The private use of immovable goods acquired or developed by an accountable person on or after 1 January 2011 is not a taxable supply. **(1A)**

The transfer of ownership of immovable goods by way of very long leases is a supply of goods. This subsection confirms that the supply of goods for VAT purposes includes the transfer in substance of certain rights in respect of immovable goods. These supplies are defined in *section 2(1)* as transfers of the freehold equivalent interest. **(2)**

There is an anti-avoidance provision in *subsection (3)*. This is intended to combat avoidance of tax, which might be attempted through a combination of traders (chain of sellers). It provides that each seller is deemed to have made a supply to the next person in the chain. Tax is payable by each person who becomes entitled to receive consideration, not just the person who actually supplied the goods. **(3)**

20. Transfers, etc. deemed not to be supplies

<ins>Summary</ins>

This section deals with transfers and disposals that are deemed not to be supplies of goods. For example, the transfer of ownership of a business – in whole or in part – from one accountable person to another is deemed not to be a supply of goods and so is not taxable. Other cases covered in this section are changes of ownership of goods as security for a loan, transfers by a finance company on completion of a hire purchase agreement and some disposals of goods by insurance companies.

<ins>Details</ins>

The transfer of ownership of goods by a finance company to the purchaser on completion of a hire-purchase agreement is not a supply of goods. This is the legal transfer. The actual handing over of the goods <ins>is</ins> a supply – see *section 19(1)(c).* **(1)**

Transfers of ownership of goods as security for a loan or debt are deemed not to be supplies of goods. **(2)(a)**

Transfers of ownership of goods, where the goods are held as security upon repayment of a loan, are deemed not to be supplies of goods. **(2)(b)**

The transfer of assets of a business to an accountable person is deemed not to be a supply of goods where the assets constitute an undertaking or part of an undertaking that can be operated on an independent basis. This applies even if the business has ceased trading. Note that there is a mirror provision for services, under which the transfer of goodwill or other intangible business assets is not a supply of services – see *section 26*. **(2)(c)**

The disposal of goods acquired from an insured person by an insurance company in connection with the settlement of an insurance claim, in cases where the insured person did not get deductibility for VAT incurred by him/her on the purchase of the goods, is not a supply of goods. *Note that where these goods are acquired by a taxable dealer under the margin scheme – see section 87 – they count as margin scheme goods.* **(3)**

21. Supplies made free of charge

Summary

This section covers the tax treatment of goods supplied free of charge. The general rule is that self-supplies and intra-Community transfers of taxable goods are deemed to be supplied for consideration, which means that they are subject to VAT. There are exceptions. Gifts worth €20 or less and advertising goods, industrial samples and suchlike that are given free to customers in reasonable quantities are not taxable.

Details

"Self-supplies" and intra-Community transfers of goods are deemed to be made for consideration in the course or furtherance of business to enable them to be subjected to a VAT charge. There are exceptions to the rule for:

- Gifts given in the course or furtherance of business where the cost to the donor does not exceed a sum specified by regulations. This is currently €20 as specified in Regulation 5 of the VAT Regulations 2010.

- Gifts of industrial samples in reasonable quantities, in a form not available to customers.

The section does not apply to a "series or succession of gifts" made to the same person. This is to stop someone circumventing the provision by breaking the supply up into a series of small gifts below the threshold.

(Also see *section 108* on inspection and removal of records, under which an officer can request a trader to provide details on gifts and promotional items supplied.)

22. Special rules in relation to supplies of goods

Summary

This section contains 3 special rules in relation to supplies of goods by agents, finance houses and liquidators. First, it provides that supplies by agents (such as auctioneers) on a commission basis are treated as simultaneous sales to and by the agent. Second, it provides that disposals of repossessed goods are treated as supplies for VAT purposes. Third, it provides that disposals by liquidators – for example, during a winding up of a company – are deemed to be supplied by the accountable person.

Details

Subsection (1) deals with supplies of goods on a commission basis through an auctioneer or agent (see also *section 19(1)(b)*). It provides that although auctioneers or agents sell goods on behalf of others, sales of movable goods by them on a commission basis are treated for VAT purposes as a simultaneous sale of the goods to, and by, them. This subsection also provides for the time of supply of the deemed sale of the goods to the auctioneer/agent. It treats the supply of movable goods to an auctioneer or agent as taking place at the time the auctioneer or agent sells those goods. This avoids having two separate times of supply in such sales. **(1)**

Subsection (2) provides that the disposal by a finance house of all goods repossessed from customers who default on their hire purchase agreements is a supply for VAT purposes and *paragraph 12 of Schedule 1* (i.e. exemption for supplies of goods that were used in business where tax was not claimed or passed on) does not apply. **(2)**

Subsection (3) deals with sales of an accountable person's assets by liquidators, receivers or other persons who might dispose of goods forming part of the assets of an accountable person in settlement of a debt, or in the course of a winding-up of a company. Under this provision, the accountable person's business assets that are being disposed of by the liquidator, etc. are deemed to be supplied by the accountable person in the course or furtherance of his/her business. **(3)(a)**

This subsection should be read in conjunction with *sections 76(2) and 76(3),* which provide that the liquidator/receiver etc. is responsible for paying the VAT and sending in the return and that the owner of the goods disposed of does not include details of the supplies in his/her own VAT return.

Paragraph (b) extends the application of *subsection (3)(a)* to include disposals of interests in immovable goods. **(3)(b)**

23. Supply following intra-Community acquisition

This section deals with cases where a trader, established in another Member State but not established in the State, makes an intra-Community acquisition in the State and a subsequent supply of the goods in the State. The obligation on the trader to register in the State can be avoided once the customer is registered for VAT in the State and assumes responsibility for the VAT due on the internal supply. Also see *section 11(3)*, which provides that the trader from the other Member State is not an accountable person when this section applies.

In practice, the VAT-registered customer in Ireland is regarded as having made the supply to himself or herself. The intra-Community acquisition is disregarded. (*The Irish-registered customer accounts for the VAT on the supply when the goods are withdrawn from the warehouse and is entitled to take a simultaneous VAT deduction subject to normal deductibility rules.*)

Chapter 2 - Intra-Community acquisitions

24. Intra-Community acquisitions of goods

Summary

This section defines intra-Community acquisitions (ICAs) of goods. These are movable goods supplied from one Member State to another, which are transported to the second Member State. In general, both the supplier and the customer must either be VAT-registered, carrying out exempt activities, or flat-rate farmers. These conditions do not apply to ICAs of new means of transport.

Details

An ICA of goods is defined in *subsection (1)(a)* as the acquisition of movable goods, apart from new means of transport, supplied by a person in one Member State (provided that that person is, or ought to be, registered for VAT, or carries out an exempt activity or is a flat-rate farmer) to a person in another Member State (subject to the same provisos as above) and those goods have been transported from one Member State to another. **(1)(a)**

The concept of ICA of goods is extended in *subsection (1)(b)* to cover the acquisition of a new means of transport supplied by a person in a Member State to a person in another Member State and sent from one Member State to another Member State. 'New means of transport' is defined in *section 2(1)*. **(1)(b)**

Example: ICAs from other Member States are accounted for under the system of "postponed accounting" as follows:

– Supply is zero-rated in Member State of dispatch as an EU intra-Community supply (ICS) (assuming the supplier has the purchaser's VAT number, etc. and is satisfied that it is an ICS).

– Purchaser makes an ICA and is liable for VAT on the ICA, at the rate appropriate to the goods in his/her Member State.

– Purchaser declares a liability for VAT (i.e. charges himself/herself VAT) in the VAT return for the taxable period in which the ICA took place.

– If the purchaser is entitled to deduct, the VAT payable is simultaneously deducted in the same taxable period, thus effectively cancelling out the VAT liability.

– The purchaser accounts for VAT on any subsequent supply of the goods in the normal way – i.e. when he/she sells the goods on, VAT is charged to the customers and paid over for the relevant VAT periods.

(Note that there are 2 statistical boxes on the trader's VAT return ("VAT 3") covering intra-Community transactions.)

Goods that have been subject to tax under the margin scheme or the special scheme for auctioneers in one Member State and dispatched to another Member State are not treated as ICAs in the Member State of arrival. **(2)**

Subsection (3) sets out a number of deemed provisions for the purposes of the definition of intra-Community goods (this section) and the place of supply of intra-Community goods (*section 32*), as follows: **(3)**

- A transaction in another Member State is deemed to be a supply in a case where a similar transaction would be a supply under *Chapter 1* or under *Chapter 1 of Part 4*, if it had taken place in the State. **(3)(a)**

- An activity occurring in another Member State is deemed to be an exempt activity if, had it occurred in the State, it would have been an exempt activity. **(3)(b)**

- A person in another Member State is deemed to be a flat-rate farmer if, had he or she been carrying out the same work in the State, he or she would be a flat-rate farmer. **(3)(c)**

- A person in another Member State is deemed to be a taxable person or entitled to elect to be a taxable person if, had he or she been active in the State, he/she would be an accountable person or entitled to elect to be an accountable person. **(3)(d)**

There is a special rule in *subsection (4)* for goods that are consigned from outside the Community to non-taxable entities in the State, in situations where the goods are imported through another Member State (MS) (and hence subject to VAT in that MS). In such cases, the subsequent arrival of the goods in the State is treated as an ICA. **(4)**

The purpose of this provision is to prevent non-taxable entities from selecting a low-rate Member State as the place in which they are to be taxed when importing goods into the Community. The rule in *subsection (4)* ensures that an ICA arises in Ireland. If the trader's ICAs exceed the threshold (currently €41,000) Irish VAT will be charged on the acquisition of the goods. The import VAT paid in the other Member State is refundable in that Member State – see also notes on *section 54* - provision exists in that section for repayment of VAT charged on the importation of goods into the State which are consigned to other Member States in the reverse of the circumstances outlined here.

Chapter 3 - Supply of services

25. Meaning of supply of services

Summary

This section defines the meaning of supply of services. For VAT purposes, a service is any commercial activity that is not a supply of goods. Services also include refraining from doing something and the granting or surrendering of a right.

(Also see the two-thirds rule in section 41: A transaction that appears to be a supply of services may be taxed as a supply of goods. This applies where the VAT-exclusive cost of the goods to the supplier exceeds two-thirds of the VAT-exclusive price charged to the customer.)

Details

Subsection (1) defines services in very wide terms and provides, in effect, that any business activity that is not a supply of goods is a supply of services. It includes the performance or omission of any act or the toleration of a situation. The definition, therefore, includes such activities as the hiring and repairing of goods, the granting of patent or copyright licences, the promotion of competitions and entertainment including dances, the transport of goods, advertising and the discharge of an undertaking to refrain from any activity, or the toleration of any situation. **(1)**

The supply of ready-to-consume food or drink is treated as a supply of services and not a supply of goods where it is supplied- **(2)**

- by a vending machine,
- on the premises of a catering or similar business, or
- on the premises or site of any other business where facilities are provided to consume the food or drink supplied. This includes on-site catering for films and the like, where there is no fixed premises.

26. Transfer of intangible business assets deemed not to be supply of services

Summary

This section provides that the transfer by an accountable person to another accountable person or a flat-rate farmer of the goodwill or other intangible assets of a business, in connection with the transfer of a business, is not a supply of services. This also applies to the transfer of such assets by a person who is not an accountable person to another person. This provision matches the relief provided for in *section 20(2)(c)* in relation to goods.

For the purposes of the section, accountable person does not include a person who is accountable only by virtue of the making of intra-Community acquisitions or received services from abroad. **(1)**

The transfer of the goodwill or other intangible assets of a business, in connection with the transfer of a business, is not a supply of services. The effect of the provision is that if any consideration is paid by a purchaser of a business in connection with the transfer, e.g. a payment for the goodwill of the business, the transaction will not be regarded as a supply of services for VAT purposes, and so will not be taxable. **(2)**

27. Self-supply of services

Summary

This section makes provision for the charging of "self-supplies of services" in accordance with regulations. There are regulations covering the private use of business assets and for catering services. The section also provides that the private or non-business use of property is a self-supply of services, if VAT deductibility had been claimed in respect of its development or purchase.

Details

Subsection (1) makes provision for the charging of "self-supplies of services" in accordance with regulations. The Regulations made to date concern the use of business assets for private or non-business purposes and canteens (Regulations 7 and 8 of the VAT Regulations 2010). **(1)**

Other self-supplies of services are not taxable, but the VAT must be accounted for on the goods used. For example, if a painter paints his own house using paint taken from stock, he or she is liable to account for VAT on the paint but not on the value of labour supplied.

Subsection (2) provides, subject to *subsection (3),* that with effect from 1 July 2008 if VAT deductibility is claimed by a business on the acquisition or development of property, then the private or non-business use of that property during the next 20 years is a taxable supply of services. The taxable amount is based on the amount of VAT charged to the accountable person at the time of the purchase. **(2)**

Subsection (3) excludes immovable goods acquired or developed on or after 1 January 2011 from the provision in *subsection (2).* **(3)**

Example:

- Cost of property: €1million, made up of €881,058 plus €118,942 VAT @ 13.5%

- Property used 80% for business and 20% for residential purposes

- VAT deductibility of €118,942 claimed (i.e. full amount).

- Amount on which VAT is chargeable for each taxable period is: €881,058 x 20% = €176,211 (private proportion) x 1/20 = €8,810 (annual amount) x 1/6 =€1,468 (per taxable period).

- VAT payable in respect of the self-supply for each taxable period is €1,468 x 21% = €308.

28. Special rules in relation to supplies of services

Summary

This section contains technical provisions in relation to supplies of services. The first two subsections are designed to ensure that services supplied by undisclosed agents and by persons who are not legally entitled to receive a fee are brought within the VAT net. The third subsection provides that persons registered for VAT will be able to recover the VAT element of legal and professional fees where the services are supplied to the insurance company under an indemnity policy, rather than directly to the taxable business. The fourth and fifth subsections make specific provisions in relation to receivers and liquidators.

Details

Subsection (1), which deals with undisclosed agents, provides that the supply of services by an agent acting in his or her own name but on behalf of another person is deemed to be a supply to and simultaneously by that agent. **(1)**

Subsection (2) deals with the supply of services by barristers. When a barrister supplies a service he or she is not legally entitled to receive a fee in respect of that supply even though appropriate steps may be taken at the time to secure payment. Accordingly, no part of the fee charged to the client may be regarded as consideration which the barrister "becomes entitled to receive" in accordance with *section 37(1)* and no liability to tax arises by virtue only of the supply of the service. **(2)**

This subsection provides that the barrister's service is deemed to take place when the consideration is paid. Therefore, a barrister will have no liability to tax until he/she has supplied a service and has been paid in respect of the supply. Also, the obligation to issue an invoice under *Chapter 2 of Part 9* does not arise until the two conditions (supply and payment) have been fulfilled. In effect the barrister operates a form of moneys received basis – see *section 80*.

Subsection (3) provides that, for VAT purposes, the services of a barrister or solicitor supplied for a firm of insurers are deemed to be supplied to the holder of the policy of insurance where the holder is indemnified under the policy in respect of the costs of such services. Consequently, a policy holder who is a taxable person for VAT purposes can recover VAT charged on solicitors' and barristers' services which relate to his or her taxable supplies. **(3)**

Subsection (4) provides that where a receiver/liquidator supplies a service/letting in the course of carrying on the business of an accountable person, or in the course of winding up a company, then the accountable person is deemed to have supplied the service/letting. **(4)**

Subsection (5) deals with a situation where a receiver takes control of a property and the receiver opts to tax a new letting of that property. Where the owner of the property was not an accountable person (i.e. had been engaged in exempt letting) the supply is deemed to be made by, and the option to tax deemed to have been exercised by, the owner. **(5)**

PART 4 – PLACE OF TAXABLE TRANSACTIONS

Overview

This Part, which has 3 Chapters, contains the provisions relating to the place of taxable transactions for VAT. These "place of supply rules" are central to VAT. If the place of supply is outside the State or is deemed to be outside the State, then Irish VAT does not arise.

Chapter 1 deals with the place of supply of goods. It covers the general rules, rules in relation to goods supplied to non-registered persons and special rules for the place of gas and electricity supplies (*sections 29 to 31*).

Chapter 2 covers the place of supply of intra-Community acquisitions (*section 32*).

Chapter 3 deals with the place of supply of services. It includes definitions, the general rules on place of supply of services, exceptions to those rules and use and enjoyment provisions (*sections 33 to 35*).

Chapter 1 - Place of supply of goods

29. General rules

Summary

This section defines the place at which a supply of goods is deemed to take place. The place of supply of goods determines whether or not the supply is liable to VAT in the State. Generally speaking, if the supply is in the State, then the goods are subject to VAT in the State.

Details

Where goods are dispatched or transported, other than under a distance-selling arrangement (see *section 30*), the place of supply is where the transport begins. This is subject to *subsection (2)*. **(1)(a)**

Where goods are installed or assembled by or on behalf of the supplier, the place of supply is the place where the goods are installed or assembled. **(1)(b)**

Example: A UK-based company supplies and installs a machine in an Irish company's premises in the State. The place of supply is Ireland. The UK company does not have to register for VAT in the State. The recipient Irish company self-accounts for the VAT on the supply (see *section 10(2)*), and can claim a simultaneous input credit if the goods are used for the taxable business.

Where goods are not dispatched or transported, the place of supply is deemed to be the place where the goods are at the time of their supply. **(1)(c)**

Example: Goods bought by foreign tourist from a retailer in the State. Irish VAT arises on the purchase.

In the case of goods supplied on board vessels, aircraft and trains during intra-Community transport the place of supply is the place where the transport begins. **(1)(d)**

Example: A private individual buys goods on board the Dublin-Holyhead ferry, which leaves from Dublin. Place of supply is the State and Irish VAT arises.

Where goods are imported into the State from outside the Community and subsequently sold, and delivered directly, to a customer in the State, the place of supply is not the place where the transport began (as per *subsection (1)(a)*, but is deemed to be in the State. **(2)**

30. Goods supplied to non-registered persons

Summary

This section sets out what are known as the distance sales rules. Distance sales into Ireland covers mail order, etc. sales to Irish non-registered customers, where the supplier is responsible for delivering the goods. Where the value of distance sales into the State exceeds €35,000 in a calendar year, the supplier must register for VAT in the State. He or she may opt to register in any event.

Similar rules apply to Irish mail order businesses and other distance sellers supplying to individuals in other Member States. The Irish business must register in each Member State in which the sales threshold is exceeded, but may opt to register in that State even if it is not. The threshold is €100,000 or the equivalent for Germany, France, Luxembourg, Netherlands and the United Kingdom and €35,000 or the equivalent for the other Member States.

New means of transport and distance sales of excisable goods are not covered by the distance sales thresholds. For distance sellers who are below the threshold, the place of supply is where the transport began (i.e. the seller's Member State, not the customer's Member State.)

Details

Where goods are transported or dispatched to unregistered persons: **(1)(a)**

– in the State, from another Member State or from outside the Community through another Member State, or

– in another Member State, from the State,

the place of supply is deemed to be the place where the transportation or dispatch ends. In other words, where the private customer is.

New means of transport are not covered by the distance sales rules. **(1)(b)**

These rules only apply where the distance sales thresholds are exceeded. **(2)(a)**

– For goods coming into Ireland, the threshold is €35,000

– For goods going out of Ireland, the threshold is €35,000 (or the equivalent in national currency) for annual supplies into some Member States and €100,000 (or equivalent) for annual supplies into other Member States.

However, suppliers can elect that the place of supply rules in subsection (1) apply, by opting to register in the Member State of destination, even if their supplies do not reach the thresholds. Also, it may be noted that accountable persons who supply goods to other Member States under the distance sales rules are obliged to issue an invoice under *section 66(1)*.

> *There is no threshold for excisable products – any supplier making distance sales of excisable goods to another EU Member State must register in that Member State, because the sales will always be subject to VAT in the Member State of arrival.*

New means of transport are not covered by the distance sales rules. **(2)(b)**

Note that while this section provides that place of supply for cross-border supplies to non-registered persons is where the transport ends, *section 87(11)* ensures that this rule does not apply to margin scheme goods.

Examples:

- VAT-registered UK trader supplies mail order goods to individuals in Ireland, turnover €40,000 per annum. The place of supply is where the transport ends. The trader must register for VAT in the State and account for Irish VAT on the goods.

- VAT-registered Irish trader supplies mail order goods to individuals in Germany, turnover €90,000 per annum. The threshold for Germany is €100,000. The trader does not opt to register in Germany. The place of supply is where the transport begins (the State). The trader accounts for Irish VAT on the goods.

31. Gas and electricity supplies

Summary

For the purposes of VAT law, the supply of gas, of heat or cooling energy or of electricity is considered a supply of goods – see *section 2(3)*. This section sets out the place of supply for gas, heat and cooling energy and electricity. There are two rules. Where the supply is to a taxable dealer, the place of supply is where the dealer has his or her business. Where the supply is to a customer other than a dealer, the place of supply is where the goods are used (in other words, where the meter is).

Details

A taxable dealer is defined as a person whose main business is the supply of natural gas, heat or cooling energy through networks or electricity for consideration and whose own consumption of those goods is negligible. **(1)(a)**

The place of supply of gas, heat or cooling energy and electricity supplied to a taxable dealer in the State, in another Member State, or outside the Community is the place where the taxable dealer has established the business concerned or has a fixed establishment for which the goods are supplied, or in the absence of such a place of business or fixed establishment the place where the taxable dealer has a permanent address or usually resides. **(1)(b)(i)**

When gas, heat or cooling energy or electricity is supplied to a person who is not a taxable dealer, the place of supply is the place where the customer uses and consumes those goods. **(1)(b)(ii)**

Where all the gas, heat or cooling energy or electricity is not consumed by the customer who is not a taxable dealer, it is deemed to be consumed where the customer has his/her business, address, etc. **(2)**

Chapter 2 - Place of intra-Community acquisitions

32. Intra-Community acquisitions of goods

Summary

This section sets out the place of supply rules for intra-Community acquisitions (ICAs). The basic rule is that the place of supply of an ICA is the Member State where the transportation ends. However, if the customer acquiring the goods uses a VAT number issued by a different Member State, then (except in the case of triangular transactions, see next paragraph) the place of supply is the Member State that issued the number, unless the customer can prove that the VAT was paid in the Member State where the transportation ended.

A triangular transaction involves 3 Member States – for example a supplier in Member State A sells goods to a customer registered for VAT in Member State B but, at the request of the customer, delivers them to Member State C. In this case, the intra-Community acquisition is potentially liable to tax in two Member States - the place of actual delivery (C) and the place where the purchaser is registered for VAT (B). There is a special provision in this section to provide that triangular transactions are taxed once in the Community, thus avoiding possible double taxation.

Details

The place where an intra-Community acquisition occurs is the Member State where the dispatch or transportation ends. **(1)**

Without prejudice to the core rule on ICA place of supply above, *subsection (2*) provides that the ICA occurs in the Member State that issued the VAT number cited by the customer for the purpose of the ICA, unless the customer can prove that VAT was paid in the Member State where the dispatch or transportation ends. **(2)**

The provisions in *subsection (2)* do not apply where: **(3)**

- There is triangulation (i.e. Irish trader quotes his/her Irish VAT number for the purpose of the ICA and the goods are transported from one Member State to another, neither of which is Ireland). **(3)(a)**

- The Irish trader supplies the goods to a VAT registered person in the destination Member State. **(3)(b)**

- The Irish trader issues an invoice for that supply showing (apart from the usual details, description of goods etc.): **(3)(c)**

  - his/her own VAT number and the VAT number of the person in receipt of the goods; **(3)(c)(i)**

  - an explicit reference to EC triangulation simplification; **(3)(c)(ii)**

  - an indication that the person in receipt of the goods is liable to account for the VAT due on the supply. **(3)(c)(iii)**

- The Irish trader includes the supply on his/her VIES return as if it were an intra-Community supply, and indicates (flag "T" on the VIES return) that it is a triangulation case. (Regulations provide for this.) **(3)(d)**

Example: A (Irish trader, in Ireland) supplies to B (UK trader) but delivers the goods directly to C (French trader).

- The intra-Community supply from A to B is zero-rated.

- The supply is listed on the A to B VIES

- Trader in B makes an ICA and accounts in his/her VAT return.

- B issues invoice to C. This is a VAT-free supply. C accounts for the transaction in its VAT return as a received supply

- C is deemed to have accounted for B's liability. If C has full deductibility, it takes a simultaneous credit for the transaction.

Chapter 3 - Place of supply of services

33. Application and interpretation of section 34

Summary

This section sets out the general rules on how *section 34*, which contains the place of supply provisions for services, are to be interpreted.

Details

For the purposes of the general place of supply rules in *section 34*, every person registered for VAT is a taxable person (i.e. a person carrying on a business). This means that non-taxable legal persons such as schools, hospitals, etc. who have been registered for VAT are considered to be a business and are required to produce their VAT numbers to the supplier. **(1)**

Supplies in relation to immovable goods (place of supply, where the goods are located) include: **(2)**

- Estate agents/experts' services; **(2)(a)**
- Holiday accommodation; **(2)(b)**
- Telecommunications services, broadcasting services or electronically supplied services when supplied together with holiday accommodation where the supply is by the provider of that accommodation acting in his/her own name; **(2)(ba)**
- Preparatory construction work (architects, etc.). **(2)(c)**

For supplies in relation to Business to Consumer (B2C) transport other than intra-Community transport of goods (place of supply, where the transport takes place), 'intra-Community transport of goods' means the departure and arrival of the goods are in different Member States. **(3)**

For supplies in relation to short-term hiring of transport (place of supply, where the customer picks up the transport), 'short-term' means not more than 30 days (90 days in the case of a vessel). **(4)**

For supplies in relation to long-term hiring out of a means of transport to a non-taxable person, 'long-term' means more than 30 days or, if the means of transport is a vessel, more than 90 days. **(4A)**

For telecommunications, broadcasting and electronically supplied services made to a non-taxable person, the provisions of *section 34(kc)* apply from the date on which the threshold of €10,000 in respect of those supplies is exceeded, being where the non-taxable person is established, has a permanent address or usually resides. **(4B)**

All the B2C services that, when supplied to non-taxable persons established outside the Community, are deemed to be supplied where the customer is (in other words, place of supply is outside the EU and no VAT is charged by the Irish supplier) are listed in *subsection (5)*. These are as follows: **(5)**

(a) transfers and assignments of copyrights, patents, licences, trade marks and similar rights;

(b) advertising services;

(c) the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;

(d) obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right;

(e) banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;

(f) the supply of staff;

(g) the hiring out of movable tangible property, with the exception of all means of transport;

(h) the provision of access to, and of transmission or distribution through, natural gas systems or to any network connected to such a system, to the electricity system or to the heating or cooling networks and the provision of other services directly linked thereto;

(i) telecommunications services;

(j) radio or television broadcasting services;

(k) electronically supplied services.

34. General rules

Summary

From 1 January 2010, there are two general place of supply rules for services, depending on whether the recipient is a business or a consumer.

- For Business to Business (B2B) services, the general rule is that the place of supply (and, therefore, taxation) is the place where the recipient is established.

- For Business to Consumer (B2C) services, the general rule is that the place of supply (and, therefore, taxation) is the place where the supplier is established.

There are, however, a number of exceptions to the general rules, depending on the type of service. Tables 4.1 and 4.2 at the end of this Part summarise the position.

Details

Paragraphs (a) and (b) give the general rules that apply from 1 January 2010 on place of supply for services. Paragraphs (c) to (n) give the exceptions.

Paragraph (a) provides that, unless covered by an exception, the place of supply (and, therefore, taxation) in respect of Business to Business (B2B) services is the place where the recipient is established. **(a)**

Paragraph (b) provides that, unless covered by an exception, the place of supply (and, therefore, taxation) in respect of Business to Consumer (B2C) services is the place where the supplier is established. **(b)**

The exceptions to the general B2B rule for place of supply of services are in paragraphs (c), (d), (g), (i), (j) and (k). The exceptions to the general B2C rule for place of supply of services are in paragraphs (c) to (n) – i.e. all of the paragraphs below.

- Immovable goods or grant of a right to use immovable goods — the place where those goods are located. **(c)**

- Passenger transport —the place where the transport takes place. **(d)**

- B2C goods transport outside EU —the place where the transport takes place. **(e)**

- B2C goods transport within EU —the place of departure of the goods (being the place where the transport of the goods actually begins). **(f)**

- The supply of services, and of any ancillary services, in respect of or related to admission to a cultural, artistic, sporting, scientific, educational, entertainment or similar event, such as a fair or exhibition (including the supply of tickets granting access to such an event), to a taxable person —the place where that event actually takes place. **(g)**

- The supply of services, and of any ancillary services, in respect of or related to a cultural, artistic, sporting, scientific, educational, entertainment or similar activity, such as a fair or exhibition (including the supply of services of the organiser of such an activity or the supply of tickets granting access to such an activity), and the supply is to a non-taxable person —the place where that activity actually takes place. **(ga)**

- B2C ancillary transport (such as loading goods), valuations/work on movable goods or contract work —the place where the services are physically carried out. **(h)**

- Restaurant or catering services (other than next paragraph) —the place where the services are physically carried out. **(i)**

- Restaurant or catering services on board ships, planes or trains in the EU; journey starts in the State —the State. **(j)**

- Short-term hiring of transport —the place where the customer first gets the means of transport. **(k)**

- Long-term hiring out of a means of transport —subject to (kb), the place where the customer is established, has a permanent address or usually resides. **(ka)**

- Long-term hiring out of a pleasure boat —the place where the supplier puts the boat at the customer's disposal provided that the supplier's place of business or fixed establishment is in that place. **(kb)**

- Subject to (kd), telecommunications services, radio or television broadcasting services or electronically supplied services (other than services referred to in *section 33(2)(ba)* and to which paragraph (c) relates) —the place where the customer is established, has a permanent address or usually resides. **(kc)**

– Telecommunications services, radio or television broadcasting services or electronically supplied services, the value of which does not exceed €10,000 (VAT-exclusive) in the previous calendar year nor in the current calendar year, made by a supplier who is established in only one Member State, other than the Member State of the non-taxable persons to whom such supplies are made, —unless the supplier opts to have the place of supply determined in accordance with (kc), the place where the supplier is established. **(kd)**

  Where a supplier opts to have the place of supply determined in accordance with (kc), that option must remain in place for a period of 2 calendar years.

– B2C services listed in *section 33(5)* to non-EU customers —the place where the customer is. **(m)**

– B2C services supplied by an intermediary —the place where the underlying transaction is supplied. **(n)**

Tables 4.1 and 4.2 at the end of this Part summarise the place of supply rules for services.

35. Use and enjoyment provisions

<u>Summary</u>

This section covers a number of specific use and enjoyment provisions in relation to the place of supply of services. The purpose of the use and enjoyment rules is to prevent double taxation, non-taxation or distortions of competition and to better reflect the place where service is actually received (which, in turn, is the place of taxation). The section covers two types of situations:

– The place of supply of services provided in the State but effectively used and enjoyed outside the Community is deemed to be outside the Community.

– The place of supply of services provided by persons established outside the Community but effectively used and enjoyed in the State is deemed to be the State.

<u>Details</u>

The hiring out of movable goods – actual place of supply outside EU but used and enjoyed in the State – place of supply deemed to be the State. **(1)**

The hiring out of means of transport – actual place of supply in the State but used and enjoyed outside the EU – place of supply deemed to be outside EU. **(2)**

Business to Consumer (B2C) supplies of telecommunications, radio/television broadcasting or phone card – actual place of supply outside EU but used and enjoyed in the State – place of supply deemed to be the State. **(3)**

B2C supplies of telecommunications service or phone card – actual place of supply outside EU but used and enjoyed in the State – place of supply deemed to be the State. **(4)**

B2C supplies of financial and insurance services, including reinsurance and financial fund management (but excluding the provision of safe deposit facilities) – actual place of supply outside EU but used and enjoyed in the State – place of supply deemed to be the State. **(5)**

Money transfer services supplied to persons in the State by an intermediary on behalf of a principal established outside the EU – actual place of supply outside EU but used and enjoyed in the State – place of supply deemed to be the State. **(6)**

Table 4.1: Summary of place of supply rules for services (unless subject to exceptions or effective use and enjoyment provisions)

Country of establishment of supplier	**Country in which customer established**	**Place of supply**	**Person liable to account for Irish VAT**
		B2B	
Ireland	Other EU State	Other EU State	No Irish VAT
	Outside EU	Outside EU	No Irish VAT
Other EU State	Ireland	Ireland	Customer
Outside EU	Ireland	Ireland	Customer
		B2C	
Ireland	Other EU State	Ireland	Supplier
	Outside EU	Depends on service – outside EU if listed in section 33(5)	Supplier (if VAT occurs)
Other EU State	Ireland	Other EU State	No Irish VAT
Outside EU	Ireland	Depends on service	Supplier (if taxable in the State)

Table 4.2: Place of supply rules for services – overview

Services	Place of supply rule	Comments
Supply of services connected with immovable goods.	Where the goods are located.	A specific provision applies (see section 12(2)) where the service provider is outside Ireland and the work is carried out in Ireland, under which VAT is accounted for by the Irish business recipient on a reverse charge basis. But subject to the exceptions as listed under section 12(2) being section 33(2)(b), (ba) and (c) under which the service provider from abroad is obliged to register and account for the VAT arising in the State.
Passenger transport services (B2B and B2C)	Where the passenger transport takes place.	
Intra-Community transport of goods B2C	Place of departure.	
Intra-Community transport of goods B2B	Where the customer is established	
Admissions and ancillary services in relation to cultural, artistic, sporting, scientific educational, entertainment or similar events including tickets granting access to such an event (B2B)	Where the event takes place.	
Admissions and ancillary services in relation to cultural, artistic, sporting, scientific educational, entertainment or similar activity, including services of the organiser or tickets granting access to such an activity (B2C)	Where the activity takes place	
Ancillary transport services, valuations/work on movable property	Where the services are physically carried out.	General rule with reverse charge applies for B2B

Services	**Place of supply rule**	**Comments**
Restaurant and catering services	Where the services are physically carried out	Example: A catering supplier from another Member State who supplies catering services in the State is required to register and account for Irish VAT on those catering services in the State.
Restaurant and catering services for consumption on board ships, planes and trains	The point of departure	This mirrors the rules for supplies of goods for consumption on board
Hiring out of means of transport (B2B)	Short-term: where customer picks up the transport. Long term: General B2B rules.	Short-term hire means up to 30 days for cars, vans etc. and up to 90 days for vessels. Long-term hire means more than 30 days for caravans etc. and more than 90 days for vessels.
Hiring out of means of transport (B2C)	Short-term: where the customer picks up the transport. Long term: where the customer resides - but in the case of a pleasure boat which the customer picks up at the supplier's establishment, at that location.	

Services	**Place of supply rule**	**Comments**
Telecommunications services, radio or television broadcasting services or electronically supplied services (other than services referred to in *section 33(2)(ba)* and to which *section 34(c) relates*)	Where the customer is established, has a permanent address or usually resides. In the case of supplies made to non-taxable persons generally where the customer is established, has a permanent address or usually resides in accordance with section 34(kc) or where the supplier opts to have such services which are below the annual turnover of €10,000 taxed in accordance with section 34(kc).	Exceptions to this rule are covered under the 'Supply of services connected with immovable goods' rules above. A further exception arises where a supplier's annual value of telecommunications services, radio or television broadcasting services or electronically supplied services made to non-taxable persons are below the annual turnover of €10,000 and the supplier treats the place of supply in accordance with the provisions of section 34(kd).

PART 5 – TAXABLE AMOUNT

Overview

This Part, which has 2 Chapters, contains provisions relating to the taxable amount (*sections 36 to 45*).

Chapter 1 sets out the main rules on the taxable amount – that is, the amount on which tax is chargeable – for different transactions. In general, VAT is payable on the full consideration, excluding the tax itself, but including any ancillary charges made, such as additions for packing, transport, etc. and any other costs that the supplier passes on to the customer. Revenue may also make a determination that tax is chargeable on the basis of open market value in some circumstances.

This Chapter also covers the taxable amount for vouchers, tokens and the like, and the calculation of the taxable amount for self-supplies, for services received from abroad and for cross-border transfers of business goods. Other provisions include the rule for determining whether a supply is taxed at the rate appropriate to a supply of goods or a supply of services when both goods and services are supplied together, as well as the taxable amount for excisable products and other special cases.

Chapter 2 deals with adjustments when, for example, the VAT rate changes before a contract is fulfilled. The provisions also cover recovery of VAT when the tax is shown separately on an invoice issued by an accountable person.

Chapter 1 – Taxable amount – principal provisions

36. Definitions – Chapter 1 (Part 5)

This section defines open market price and open market value for the purposes of *Chapter 1 of Part 5*.

- Open market price is the price that the goods or services in question might reasonably be expected to fetch on the open market. This applies to goods, services and intra-Community acquisitions. *Note that it does not apply to imports, where customs rules apply – see section 53*.

- Open market value is the arm's length consideration for the goods and services. If there is no comparable supply, the open market value is not less than the purchase price/cost to the supplier.

37. General rules on taxable amount

Summary

This section sets out the general rules on the taxable amount in respect of the various transactions liable to tax. In general, tax is payable on the full amount payable to the supplier, excluding the tax itself, but including any ancillary charges made, such as additions for packing, transport, etc.

Details

In the case of supplies of goods or services for consideration by a taxable person in the State, the core rule is that tax is payable on the full consideration, excluding VAT itself, but including all other commissions, costs, charges, etc. **(1)**

The rule for supplies within the State also applies in the case of intra-Community acquisitions (ICAs) –VAT is chargeable on the full consideration, excluding the VAT itself. **(2)**

In barter transactions, or in transactions in which the consideration is not stated wholly in terms of money for supplies of goods, services or ICAs, tax is payable by reference to what might reasonably be expected to be the open-market (arm's length) price of the goods or services supplied. **(3)**

The exchange rates to be used in converting foreign currency invoices in the case of supplies or ICAs is set out in subsection (4). Note that: **(4)**

-in the case of goods liable to VAT on importation, conversion of foreign currency invoices is carried out in accordance with customs rules – *section 53* refers.

-in the case of supplies to which the special schemes for telecommunications, broadcasting and e-services are applied – *sections 91C(5) and 91E(5)* refer.

- The basic rule is that the latest selling rate for the foreign currency recorded by the Central Bank of Ireland or the European Central Bank at the time tax becomes due should be used. In practice, rates for most major currencies are published daily. **(4)(a)**

- With Revenue's agreement, traders may use an alternative method of determining the exchange rate. This is intended to cover situations where, for example, a company uses a monthly rate for its own company transactions and wishes to use this rate also for VAT purposes. Where a trader agrees an alternative method of determining the exchange rate with Revenue, that method must be used for all transactions showing currencies other than the Euro until such agreement is withdrawn by Revenue. **(4)(b)**

38. Determination that open market value applies

Summary

This section provides that Revenue may make a determination that the value on which tax is chargeable on supplies between connected persons is the open market value in certain circumstances. The open market value is determined in terms of what a person would reasonably expect to pay for the good or service. Where there is no comparable supply, the open market value is the least cost price to the supplier. (The supplier of the goods can appeal the determination – see *section 119*)

Details

Revenue may make open market value determinations where the actual consideration falls into one of the following categories — **(1)(a)**

- lower than the open market value where the recipient is not entitled to any deduction under *Chapter 1 of Part 8*, or is not entitled to full deductibility on that supply, or is a flat-rate farmer, **(1)(a)(i)**

- lower than the open market value, being an exempted activity, where the supplier engages in non-deductible supplies or activities (defined in *section 61(1)*), or is a flat-rate farmer,

- higher than the open market value where the supplier engages in non-deductible supplies or activities (defined in *section 61(1)*), or is a flat-rate farmer, **(1)(a)(iii)**

and where

- the supplier and the recipient are connected persons, or **(1)(b)(i)**

- one exercises control over the other. **(1)(b)(ii)**

Values determined under this section apply for all purposes of the Act. **(2)**

There is provision for the making of regulations where necessary for the purposes of the section. **(3)**

Determinations may be made by a Revenue officer authorised for that purpose. **(4)**

39. General provisions on consideration

Summary

This section deals with general provisions on consideration. It sets out what the taxable amount should be when the actual consideration was more than the price that was agreed. It also provides for relief when the consideration is adjusted downwards – because (say) a discount is given.

Details

Where the amount actually received exceeds the consideration referable to a particular supply, tax is payable on the amount received. **(1)**

Subsection (2) provides for the granting of relief in cases other than those covered by the determination rules in *section 38* where the amount received is less than the full consideration, and there is a genuine business reason such as special offers, discounts allowed, bad debts, etc. The detailed procedures are set out in Regulations 9 and 10 of the VAT Regulations 2010. **(2)**

However, relief under *subsection (2)* does not apply in relation to the taxable letting of immovable goods – see *section 95*. **(3)**

Also, relief under *subsection (2)* will not be given where a supplier allows a reduction or discount in the amount of the consideration for the supply until the supplier issues a proper VAT credit note to the customer – see *section 67(1)(b).* **(4)**

Example: A business sells €100 worth of goods to another fully taxable business and charges 23% VAT. Later, a discount of €20 VAT exclusive is granted and the seller reduces his/her VAT from €23 (€100 at 23%) to €18.40 (€80 at 23%). *Subsection (4)* prevents the seller reducing VAT on the sale to €18.40 unless he/she issues a VAT credit note requiring the customer to reduce his/her input credit on the purchase to €18.40. Otherwise, there would be a tax payment of €18.40 giving rise to a tax credit of €23.

40. Special consideration rule, triangulation

Summary

This section covers the situation where an intra-Community acquisition (ICA) occurs both within the State and in the territory of another Member State as a consequence of *section 32*. Where this situation arises, VAT will be payable in the Member State to which the goods are actually delivered and, to avoid double taxation, VAT must be relieved in the other Member State. The rule in this section provides that the consideration for the ICA in the State is deemed to be nil where VAT is payable in the other Member State.

Details

Example:

- A trader in Ireland quotes his or her VAT registration number to obtain goods from France.
- The goods are actually delivered to Germany.
- The goods will be subject to VAT on the acquisition in Germany but there will also be a taxable acquisition in the State.
- Once the Irish trader establishes that tax has been paid and accounted for in Germany the tax charge in Ireland will be cancelled so as to avoid double taxation.

41. Two-thirds rule

Summary

This section is designed to prevent tax loss. It determines whether a supply is taxed at the rate appropriate to a supply of goods or a supply of services in cases where both goods and services are supplied together. The basic rule is that where the VAT-exclusive cost of the goods to the supplier exceeds two-thirds of the VAT-exclusive price charged to the customer, the supply is taxable as a supply of goods.

Details

Where there is an agreement for the supply of services (apart from food), **(1)**
and where the value of movable goods within that supply exceeds two-thirds of the total value of the agreement, excluding transport costs, the total consideration is taxed at the rate appropriate to the goods.

(Note that in the case of a multiple supply (see *section 2(1)*) it is permissible to invoice separately for the supply of goods and services, e.g. where the supply of the goods is liable at 23% and the supply of the services is liable at 13.5%. However, where separate invoices are issued for such goods and services supplied together, the amounts shown on the invoices must accurately reflect the value of the goods and services in question.)

<u>Example:</u>

– Washing machine repair, quoted price = €300 plus VAT

– Cost of materials @ 23% (ex. VAT) = €220

– Labour / profit = €80

– 220/300 is more than two thirds, so tax chargeable = €300 x 23% = €69 VAT.

If there are differently rated categories of goods involved, the total consideration is apportioned in the ratio of their respective values and is taxed at the appropriate rates. **(2)**

The provisions of *subsections (1) and (2)* also apply in the case of taxable transactions relating to immovable goods, including services consisting of building and maintenance work. **(3)**

The ‘two-thirds’ rule for goods supplied as part of a construction service contract between a subcontractor and a principal contractor covered by the reverse charge rule was set aside with effect from 1 September 2008. (The principal self-accounts for VAT for construction services received from that date – see *section 16(3)*.) **(4)**

The ‘two-thirds’ rule does not apply to supplies of construction services between connected persons that are subject to the reverse charge mechanism with effect from 1 May 2012 (*see section 16(5)*).

42. Taxable amount for certain supplies

Summary

This section covers a number of different situations in relation to establishing the taxable amount for supplies. The section covers self-supplies of goods and services in *subsection (1)*, transfer of business goods abroad and into Ireland in *subsection (2)* and services received from abroad in *subsection (3)*. Special hire-purchase rules (*subsection (4)*) and the taxable amount for excisable products (*subsection (5)*) are also covered.

Details

Subsection (1) provides for the taxable amount in the case of self-supplies liable to tax. In the case of goods used within a business for a non-taxable activity, goods withdrawn from the business, and supplies of services carried out free of charge by the taxable person for private or non-business use under *section 27*, the consideration on which tax is chargeable is the cost, excluding tax, of acquiring or producing the goods or of providing the service. **(1)**

The amount on which tax is chargeable in relation to a supply of services diverted by a business to a non-deductible business use under *section 27(1)(c)* is the open market price.

The ruling in the ECJ case of Finanzamt Munchen III v. Gerhard Mohsche confirmed that where goods and services forming part of the assets of a business are diverted to a non-business use, the taxation of those goods and services as a "self-supply" must be confined to correcting the right to deduct which has been exercised. Accordingly, only goods and services that benefited from the right to deduct may be taxed. By contrast, goods and services that were not taxed and therefore were not the subject of a deduction cannot be taxed at this stage either. This ruling confirms that for the purposes of determining "cost" to the supplier only items that have benefited from the right to deduct VAT should be included. Items that are either not taxable or exempt should be excluded from the calculation.

The amount on which tax is chargeable in relation to goods transferred by a person from his/her business in Ireland to another Member State for the purposes of his/her business is the cost of the goods to the person making the supply, or the cost price of similar goods in the State if there is no cost. **(2)(a)**

Also, if there is an intra-Community acquisition in the State following a supply in another Member State in similar circumstances (i.e. goods transferred by a person from his/her business in another Member State for the purposes of his/her business in Ireland), tax is chargeable on the cost of the goods to the person making the supply. **(2)(b)**

(Also see *section 23, supply following an intra-Community acquisition*.)

Subsection (3) specifies that in the case of received services bought in from abroad for business purposes, the recipient who is taxable under the reverse-charge rule is to be taxable by reference to the cost to him or her of acquiring the service. **(3)**

Subsection (4) is an anti-avoidance measure. It applies in cases where a trader supplies goods on hire-purchase directly to a customer without going through a finance house. This subsection prevents the trader from artificially reducing the cost of the goods. The amount subject to VAT in the transaction cannot be understated in order to inflate the cost of the tax-exempt hire purchase charge. **(4)**

In effect, this subsection provides that the open market price of the goods or the total amount receivable by the person in respect of the supply of the goods, whichever is the greater, is subject to tax. The supplier will have to isolate in his/her records the supply of taxable goods from the supply of the exempt financial service.

Subsection (5) provides that in the case of a supply in a bonded warehouse of goods liable to excise duty (other than alcohol products) to an unregistered person, the consideration will be increased for tax purposes by a notional amount of duty equal to the amount which would be payable if the goods were withdrawn from the warehouse and charged with duty at that time. Sales of alcohol products in bond are dealt with in *section* 92. **(5)**

43. Vouchers, etc.

Summary

This section deals with the VAT rules for gift tokens, gift vouchers, coupons, and similar products. In general, sales of these products (other than sales to intermediaries) are not liable to tax, except where and to the extent that the amount charged exceeds the face value. Goods and services that are supplied in exchange for the vouchers are liable at the rates appropriate to the supplies.

Details

The "redeemable value" of a coupon, stamp, telephone card, token or voucher (referred to in these notes as a "voucher, etc.") is defined in the first instance in terms of the face value. If there is no face value, it is defined in terms of the monetary value of the goods/services that it can be used to buy. **(1)**

The general rule, provided for in *subsection (2)*, is that the sale of vouchers, etc. is not chargeable to VAT at the time of the sale of the vouchers, except to the extent that the consideration exceeds the redeemable value. The charge to VAT arises later, at the time the vouchers are being cashed in for the goods and services. **(2)**

Notwithstanding the general rule above, *subsection (3)* provides that, where a voucher, etc. is sold to a person who is established in the State, in the course of business (for example, from a company to an intermediary (such as a shop) for onward supply to private individuals), the supplier is liable to VAT at the time of the sale and not later on when the voucher, etc. is redeemed. **(3)**

VAT is also chargeable on the re-sale of the vouchers by the intermediary to the private customer. As VAT is chargeable on the sale of such vouchers, VAT will not arise when the vouchers are being redeemed for goods

A voucher with a redeemable value, which is sold to a business outside the State for onward supply, is not taxable on the sale but rather the tax arises at the point of redemption of the voucher, resulting in tax being accounted for when redemption of the voucher takes place.

Subsection (4) enables the value of certain transactions to be determined in accordance with regulations. They are— **(4)**

– Supplies of trading stamps, tokens and the like which are not covered by the general rule and are supplied as *things in action* (for example – cash). In this case, the regulations may determine the amount to be nil. (See Regulation 11 of the VAT Regulations 2010.) **(4)(a)**

– Supplies of goods or services given in exchange or part exchange for tokens/vouchers etc. Under Regulation 11 of the VAT Regulations 2010 the amount on which tax is chargeable for those goods and services is the consideration received for the face-value vouchers given in exchange for the goods and services in question. This paragraph is subject to *subsection (3) or (5)*, which ensures that this valuation rule does not apply to vouchers sold through an intermediary or in the case of discounted vouchers. **(4)(b)**

Where goods are exchanged for vouchers that were sold at a discount (*and where a satisfactory audit trail can be established*) the amount on which VAT is chargeable is the sum actually received on the sale of the vouchers regardless of their face value. **(5)(a)**

Paragraph (b) gives the reference to the appropriate valuation rule in the VAT Directive for the purposes of implementing *subsection (5)(a)*. **(5)(b)**

Example of tax treatment of discounted vouchers:

- X sells €500,000 worth of €10 vouchers to Y. Because Y purchases so many vouchers in bulk, it actually pays €8 (tax-inclusive) per voucher on the basis of a bulk discount. X issues a VAT invoice to Y accordingly. X accounts to Revenue for the VAT on this transaction.

- Y sells the vouchers at face value to private consumers for €10 each. The public are unaware of what price Y paid for the vouchers.

- Y accounts for VAT at the standard rate on the amount received, i.e. the face value of the voucher (€10). Y can recover the VAT included in its purchase price of the voucher.

- The individual who purchases the €10 voucher can present it in exchange for goods provided by X. As the VAT is already accounted for on the voucher, there is no further VAT due on the supply of these goods in exchange for the voucher.

By way of background, the provision in subsection (5) gives effect to the October 1996 European Court of Justice decision in the Argos case (ECJ Case C-288/94). In this case, Argos was engaged in listing its goods in a catalogue and selling them from its showrooms. The goods could be paid for using vouchers issued and sold by Argos. The company sold the vouchers at face value. However, in the case of large volume sales, the vouchers were often sold at a discount. Typically, discounted vouchers were sold to businesses that bought them in bulk to give them to staff under incentive schemes. The question before the ECJ asked if the face value of the vouchers, or the discounted price actually paid, constituted the taxable amount for VAT. The ECJ held that the taxable amount for VAT was the sum actually received by Argos and not the face value of the vouchers.

43A Vouchers – Multi-purpose and single-purpose, etc.

<u>Summary</u>

This section deals with rules on certain vouchers issued on or after 1 January 2019.

<u>Details</u>

Subsection (1) sets out the meaning of the following: **(1)**

- a 'multi-purpose voucher' is a voucher other than a single-purpose voucher;

- a 'single-purpose voucher' is a voucher where the place of supply of the goods or the services to which the voucher relates, and the tax due on those goods or services, are known at the time of issue of the voucher

- a 'voucher' means an instrument, whether in an electronic or physical format, where there is an obligation to accept it as consideration or part consideration for a supply of goods or services and where the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instruments.

Subsection (2)(a) provides that in the case of a multi-purpose voucher which has been accepted as consideration or part consideration by a supplier for goods or services, it is the actual handing over of goods or services which constitutes a supply while the preceding transfers are disregarded. **(2)(a)**

Subsection (2)(b) provides that where additional services are supplied by a taxable person who issues or transfers a multi-purpose voucher, other than the person making the underlying supply, these additional services are taxable. **(2)(b)**

Subsection (3) provides that the taxable amount in the case of a multi-purpose voucher is the consideration paid for the voucher or, in the absence of information on that consideration, the monetary value indicated on or within the multi-purpose voucher or in the related documentation, less the amount of tax relating to the goods or services supplied. **(3)**

Subsection (4)(a) provides that each transfer of a single-purpose voucher made by a taxable person acting in his or her own name is regarded as a supply of goods or services to which the voucher relates and is subject to tax. **(4)(a)**

Subsection (4)(b) provides that where a single-purpose voucher is transferred by a taxable person acting in the name of another person, that transfer is regarded as a supply of goods or services made by that other person. **(4)(b)**

Subsection (4)(c) provides in the case of a single-purpose voucher where the supplier of the underlying goods or services is not the taxable person who issued the voucher in his or her own name, that the supplier is deemed to supply the issuer with those goods or services. **(4)(c)**

Subsection (4)(d) provides in the case of a single-purpose voucher that the actual handing over of goods or provision of services where the voucher is accepted as consideration or part consideration by the supplier is not subject to tax. **(4)(d)**

Subsection (5) provides that the taxable amount in the case of a single-purpose voucher is the sum actually received by the supplier on the sale of the voucher. **(5)**

Subsection (6) provides that this section shall apply to a single-purpose voucher or a multi-purpose voucher issued on or after 1 January 2019. **(6)**

44. Non-business use of immovable goods

Summary

This section deals with the private or non-business use of property. It provides for the calculation of the taxable amount when business assets are diverted to non-business use.

Details

Subsection (1) sets out how to calculate the amount on which tax is chargeable for a taxable period when business assets consisting of immovable goods are used for private purposes or non-business purposes. Effectively, the amount is derived by dividing the acquisition or development costs incurred by the business by 20. For any private or non-business use of the property during a taxable period, the appropriate proportion of one sixth of that amount is taxable (because there are six 2-month taxable periods in a year). **(1)**

Subsection (2) provides for the making of regulations specifying the method to be used to identify the extent to which goods are used for private or non-business purposes – see Regulation 7 of the VAT Regulations 2010. **(2)**

Chapter 2 – Adjustment and recovery of consideration

45. Adjustment and recovery of consideration

Summary

This section gives a right of adjustment of the price of goods or services under a contract if the amount of VAT payable in respect of the supply differs from the amount included in the price or provided for under the contract. VAT is generally due at the rate in force at the time of the supply or at the time of the issue of the invoice. If a contract has been entered into at a particular VAT rate, and the rate changes before the contract is fulfilled, adjustments that might be needed are provided for in this section.

The section also provides that where the tax is shown separately on an invoice issued by an accountable person, that tax is part of the price and is recoverable accordingly. (Flat-rate farmers have the same recovery rights in respect of the flat rate addition – see *section 86(2).)*

Details

This subsection gives a general right of adjustment of contract prices by reference to changes in the amount of tax payable on supplies made under the contract. However, the parties to a contract may agree among themselves that the provision will not apply to the particular supply of goods or services governed by the contract. In that case, it is a matter for the parties to provide for the price adjustment, if any, which will be made. The supplier would, of course be liable for the correct VAT liability arising on the supply of the goods/services. **(1)**

Example: Supplier agrees to supply goods/services for €100,000. The VAT rate increases before the contract is complete. In the absence of an agreement, the agreed price can be increased to include the extra VAT.

The right of having an adjustment in price made under *subsection (1)* will apply when there is a change from a situation in which tax is chargeable at a positive rate to a situation in which the zero rate or an exemption applies, or vice versa. **(2)**

Where the tax is shown separately on an invoice issued by an accountable person, that tax is part of the price and is recoverable accordingly. An accountable person must show the tax separately on invoices issued to other taxable persons and, therefore, may find it convenient to show it separately on all invoices. **(3)**

The provision in *subsection (3)* applies to an invoice issued to another accountable person only if the invoice is in proper form for VAT purposes. In other words, if an accountable person refuses to issue a proper VAT invoice to another accountable person, he or she will be unable to enforce payment of the element of VAT included in the price. **(4)**

PART 6 – RATES AND EXEMPTION

Overview

This Part contains 2 Chapters. **Chapter 1** contains the provisions relating to rates of VAT. It sets out the rates of VAT that apply in the State and provides for rules on how supplies comprising elements that potentially attract VAT at different rates are dealt with. Special rating rules for works of art, for contract work and for other supplies are also included. Revenue’s power to make determinations as to tax rates in cases of doubt is also covered (*sections 46 to 51*).

Chapter 2 deals with exemptions. It provides that VAT will not be chargeable in respect of any exempted activity (*section 52*).

Chapter 1 - Rates

46. Rates of tax

Summary

This section sets out the rates of VAT that apply in the State. All goods and services, other than those specified as being exempt or liable at the zero, 9% or 13.5% rate, are liable at the standard rate of 23%. The only exceptions are supplies of livestock or greyhounds, which are liable at the livestock rate of 4.8%. Supplies liable at 0% are listed in *Schedule 2*; supplies liable at the reduced rates of 9% and 13.5% are listed in *Schedule 3*.

The section provides that the rate to be used is the rate in force when the tax becomes due and sets out the powers the Minister for Finance has to vary the two Schedules. An interpretation of the term "specified in the Schedules" is also given.

Details

Subsection (1) lists the different rates: **(1)**

(a) 23% on all taxable goods and services not covered by paragraphs (b), (c), (ca) or (d).

(b) 0% on all goods and services in *Schedule 2.*

(c) 13.5% on all goods and services in *Schedule 3* except those goods and services to which paragraph *(ca)* applies.

(ca) 9% on all goods and services in paragraphs *7(a), 7A and 12 of Schedule 3.*

(d) 4.8% on the supply of livestock and live greyhounds.

Subsection (2) provides that the rate at which tax is chargeable in relation to the supply of goods or services is the rate in force on the date on which the tax in respect of the supply falls due. See *Chapter 3 of Part 9* for more on due dates. **(2)**

As a general rule, in dealings with another registered person the tax falls due on the date of issue of an invoice in respect of the transaction, and in dealings with an unregistered person the tax falls due on the date of the supply of the goods or services. Any payment in advance will trigger a charge to tax in respect of that payment.

Subsection (3) clarifies the meaning to be given to the word "specified" in the context of goods or services being specified in a Schedule. The paragraph makes it clear that any goods or services that are specifically excluded from any paragraph of a Schedule are automatically excluded from every other paragraph of that Schedule and are not regarded as specified in the Schedule. **(3)**

The Minister may, by order, vary *Schedule 2 or 3* by adding or deleting any goods or services from the lists. He or she may not, however, increase the rates or extend the classes of activities in the Schedules by way of order – this must be done by way of Budget Resolution and Finance Act. Ministerial orders may be amended or revoked. A Ministerial order must be passed by Dáil Éireann within 21 days of the order being laid before the Dáil. **(4)**

47. Composite and multiple supplies

Summary

This section provides for rules on how the supply of a package comprising two or more elements, each potentially attracting VAT at different rates, is treated for VAT purposes. In general, the rules provide that in a multiple supply, where items are capable of being sold independently, each item is taxable at the rate that would apply if it were sold separately. In a composite supply, on the other hand, VAT is chargeable at the rate applicable to the principal element.

Details

Subject to the "two thirds rule" in *section 41* – **(1)**

- For a composite supply, i.e. where there is a principal element to which the other elements are ancillary, the VAT rate will be the rate applying to the principal element. **(1)(a)**

- For a multiple supply, i.e. where a number of individual supplies are made together for a single consideration, the consideration will be apportioned between the various supplies involved, and each supply will be taxed at the appropriate VAT rate. **(1)(b)**

The provisions governing composite and multiple supplies also apply to the intra-Community acquisition of goods received from other Member States. **(2)**

Subsection (3) provides for the making of Regulations – see Regulation 12 of the VAT Regulations 2010. For example, there is a de-minimis rule, under which an accountable person may chose to disregard an individual supply or supplies in a multiple supply where the cost to the supplier does not exceed 50% of the total tax exclusive consideration or €1 whichever is the lesser. The maximum value of all the supplies that can be disregarded is €1. **(3)**

Examples:

- The sale of a food hamper that contains goods which, if sold separately, would be taxable at 0%, 13.5% and 23%. This is a multiple supply. Each of the differently rated elements is taxed as an individual supply at the rate appropriate to it. The consideration must be apportioned to reflect the taxable amount applicable to each rate.

- The supply of a mobile phone (23% VAT) with an instruction booklet (0% VAT). This is a composite supply; the booklet is ancillary. The rate applicable to the principal supply (23%) applies to the entire supply, regardless of how the consideration is allocated by the supplier.

48. Works of art, etc.

Summary

This section implements the special rates provision in respect of goods covered by *Schedule 5*. This covers works of art, collectors' items and antiques that are listed in Annex IX of the VAT Directive. The reduced VAT rate of 13.5% applies to imports and supplies of those goods under certain circumstances.

Details

Subsection (1)(a) provides for the 13.5% rate of VAT to apply to imports of works of art, collectors' items and antiques as specified in Schedule 5. **(1)(a)**

Subsection (1)(b) provides for the 13.5% rate of VAT to apply to *Schedule 5* works of art that are sold by the artists/their successors. **(1)(b)**

Subsection (1)(c) provide for the 13.5% rate of VAT to apply to *Schedule 5* works of art that are sold by accountable persons, not being art dealers, who acquired the art on import, or from the artist, or who got full input tax deductibility on it. **(1)(c)**

Subsection (2) confirms that the VAT rate applicable to intra-Community acquisitions of *Schedule 5* works of art by accountable persons is the 13.5% rate, in cases where the supply prior to that intra-Community acquisition to those accountable persons, if it occurred in the State, would qualify for that rate in accordance with *subsection (1)(b) or (c)*. **(2)**

49. Contract work

This section specifies the rate of VAT chargeable on the supply of the service of contract work. It provides that the rate applicable to the service is the rate that would be applicable if that supply was a supply of the goods handed over to the customer.

Example:

If an Irish printer is printing a book for a publisher in Ireland, the rate of VAT applicable to the printing work is the zero rate as this is the rate that would apply to the supply of the book itself. Similarly, if the printer is printing stationery for a customer in Ireland, the rate of VAT applicable to the printing work is the 23% rate.

The rule on the rate to apply to contract work does not interfere with the zero rating which already applies to services carried out on goods for customers who are outside the EU.

50. Provisions in relation to certain supplies

<u>Summary</u>

This section provides for 3 cases where special rules apply in relation to tax rates. These cover goods that are made up by a manufacturer, the processing of food and drink and the letting of plant and machinery.

<u>Details</u>

If a person supplies materials to a manufacturer for the purpose of having goods made for him/her and the rate of tax on the manufactured goods is higher than the rate on the materials, the manufacturer, in addition to his/her normal liability on the charge for the manufacture of the goods, is accountable for tax on the value of the materials supplied to him/her. The rate used is the difference between the two rates involved - this is in effect a supplementary charge. **(1)**

Subsection (2) is an anti-avoidance provision designed to ensure that the tax chargeable on a catering service cannot be avoided, or substantially reduced, by a scheme under which the zero-rated food would be supplied by a person other than the caterer. It provides that where a person to whom a catering service is supplied arranges for zero-rated food to be supplied to the caterer, then, the caterer, in addition to the normal liability on the catering charge, is accountable for tax at the 13.5% rate on the value of that zero-rated food supplied and used in the course of providing that service. **(2)**

In the absence of a provision of this type, two associated companies could enter into an arrangement under which one of them would sell the zero-rated food to the customer and the other would charge the customer separately for preparing and serving the food. In those circumstances, tax would be suffered only in the catering charge and the companies would enjoy an unfair advantage over competitors making a single charge for the supply of meals.

The hire of goods or machinery, which have been installed in a premises in such a way that they form part of the premises, is not charged at the same rate as the short-term letting of immovable property which is exempt, or as the supply of immovable goods which is liable at 13.5%, but is charged at the rate applicable to the hiring of those goods or machinery in normal circumstances (i.e. if the goods or machinery were movable). **(3)**

51. Determinations on rates and exemptions

Summary

This section deals with the power given to Revenue to determine the rate of tax chargeable on the supply of goods or services of any kind, or in any particular circumstances, or to determine whether or not a particular activity is exempt. The purpose is to clarify areas of genuine doubt. Determinations may be made at the request of an accountable person or the Revenue Commissioners may make one on their own initiative.

Details

On the application of an accountable person, Revenue must determine whether a particular activity is taxable or exempt; and if it is taxable, what is the appropriate rate of tax chargeable. Before making any such determination, they may consult anyone whom they consider may be of assistance to them – for example, relevant industry representatives. **(1)**

Revenue may, on their own initiative, make a determination about any of the matters referred to in *subsection (1)*. For example, Revenue might use this power to remove doubts, if they felt that confusion existed among traders about the correct rate of tax chargeable on the supply of goods or services of any kind. **(2)**

The date from which a determination under *subsection (1)* will have effect is the date specified in the determination communicated to the trader who requested the determination. The date from which a determination under *subsection (2)* will have effect is the date specified in the determination as published in Iris Oifigiúil. **(3)**

Revenue is prevented from making a determination about any matter which has already been determined on appeal or which is governed by an order made by the Minister for Finance. Also, since the basic reason for making a determination is to remove doubt, Revenue will not make a determination if no real doubt exists about the correct rate chargeable – for instance, if they had already determined the rate or if it is clear that the trading community generally are agreed on what the correct rate is. **(4)**

The manner in which a determination may be published is set out in *subsection (5)*. In the case of a trader who applies for a determination under *subsection (1)*, a notice containing particulars of the determination must be communicated to him/her and may also be published in Iris Oifigiúil. A determination under *subsection (2)* above has no effect until it is published in Iris Oifigiúil and in at least one daily newspaper. **(5)**

A right of appeal to the Appeal Commissioners against a determination is provided for. A person aggrieved by a determination may lodge an appeal in accordance with section 949I of the Taxes Consolidation Act 1997 within the period of 30 days after the date of the notice containing particulars of the determination**.** **(6)**

Any accountable person aggrieved by a determination may lodge an appeal in accordance with section 949I of the Taxes Consolidation Act 1997 within the period of 30 days after the date of publication of particulars of the determination. The right of appeal is, however, confined to persons in the course of business and a member of the public in his or her private capacity cannot be a party to an appeal. **(7)**

Chapter 2 – Exemption

52. General rule on exempted activity

Summary

This section provides that tax will not be chargeable in respect of exempted activities. Exempt activities are listed in *Schedule 1*. This section gives the Minister for Finance power by order to amend Schedule 1 and to amend or revoke any such order. Apart from *Schedule 1* activities and any activities which the Minister may declare by order to be exempt, the definition of exempted activities in *section 2(1)* also includes supplies of immovable goods which are not liable to tax in accordance with the relevant provisions in *Part 11.*

An “exempted activity” differs from an activity liable at the zero rate in that no tax is chargeable on the relevant consideration nor is any input credit or repayment allowed in respect of the tax borne on purchases of goods and services for the activity. Under zero-rating, the amount of VAT charged on the consideration is zero but full input credit is allowable for any tax borne on purchases of goods and services for the activity.

Details

Subsection (1) provides that tax will not be chargeable in respect of any exempted activity. An “exempted activity” is defined in *section 2(1).* **(1)**

Subsection (2) – **(2)**

- authorises the Minister to make an order amending Schedule 1 (*paragraph (a)*),
- provides that any such order may be amended or revoked by the Minister (*paragraph (b)*), and
- makes the usual provisions in regard to laying an order before Dáil Éireann (*paragraph (c)*).

PART 7 – PROVISIONS RELATING TO IMPORTS, EXPORTS, ETC.

Overview

This Part, which has 6 sections, contains the VAT provisions relating to goods imported into the State from outside the EU as well as the rules relating to the export of goods from the State to destinations outside the Community. Certain territories are regarded as being inside or outside the EU for VAT purposes – see Table 1.2 with the notes on *section 2(4)*.

For VAT purposes,

- Imports are goods brought into Ireland from outside the EU. VAT and customs duty are normally paid at import, unless a deferred payment system is available. The rate is normally the rate that applies to the sale of similar goods in the State.

- Exports are goods supplied subject to a condition that they are to be transported to a place outside the EU. Exports are zero-rated.

The Part covers the following: -

- general rules for imports,

- relief for import VAT,

- special provisions for goods from accession countries under transit, temporary importation or transit/customs procedures,

- the special scheme under which exporters and suppliers to other Member States can have their inputs zero-rated (previously known as *section 13A authorisations*), and

- provisions for repaying tax on exports and services related thereto and the retail export scheme.

53. Imports – general provisions

Summary

This section sets out the general VAT rules for imports – that is, goods arriving from outside the EU. Broadly speaking, the rates of VAT on imports are the same rates that apply to sales in the State of similar goods. Goods that are zero-rated in the State are also zero-rated at import; goods subject to 9%, 13.5% or 23% in the State are subject to the same rates at import. (One exception covers works of art, etc. listed in *Schedule 5* that are liable at 13.5%.)

Details

The valuation for VAT purposes of imported goods is done on the same basis as for customs purposes. Also, expenses incurred in the transport of imported goods to a place of destination within the EU, if known at the time of customs clearance, must be included in the value for VAT at import and charged accordingly. **(1)**

Example:
If goods imported at Dublin are known to be under consignment to Cork, and the cost of the transport to Cork is known to the customs clearance agent at the time of entry and declared on the entry, then the taxable amount for VAT must include transport costs to Cork. Similarly, all the onward transport costs (where known) associated with goods imported into Ireland whose final destination is in another Member State must be included in the taxable amount for VAT at import.

The value for VAT is the sum of the following amounts:

– Value for customs,

– Customs duty or other tax (but not VAT),

– Transport /handling /insurance costs, and

– Onward transport costs.

Subsection (2) is an anti-avoidance measure. It provides that, with effect from 1 January 2011, where a supply or transfer of goods to a taxable person in another Member State follows the importation of those goods, the importer must, at the time of the importation, provide certain information (including the importer's VAT number and the VAT number of the customer in the other Member State) before zero-rating of the importation is allowed. **(2)**

Customs law applies to VAT on importation as if it were a duty of customs, subject to any modifications specified in regulations. (See Regulation 14 of the VAT Regulations 2010.) **(3)**

54. Remission or repayment of tax on certain imported goods

Summary

This section deals with tax relief in relation to imports. It provides for relief from import VAT in certain cases. It also provides for the repayment of VAT on certain imports consigned to other Member States.

Details

Subsection (1) allows Revenue to remit or repay, in accordance with regulations, any tax charged in relation to— **(1)**

(a) goods imported which had previously been exported;

(b) goods imported which have been or are to be re-exported;

(c) goods imported from the Shannon Customs Free airport on which tax had already been borne by a person who is not VAT-registered.

Subsection (2) provides for the repayment of VAT charged on imports where the goods are consigned to non-taxable entities in other Member States. **(2)**

This repayment will only be made where Revenue is satisfied that the goods have been taxed in the Member State of final destination. **(3)**

This provision mirrors the provisions of *section 24(4)* which provides that goods entering the State following import through another Member State in the circumstances outlined here will be taxed as intra-Community acquisitions in the State. The terms and conditions of this repayment may be set out in regulations to be made by Revenue – see *section 120(7)*.

Example:

A French university imports equipment from America that is first landed at Rosslare. If not covered by Customs transit arrangements, VAT will be payable in Ireland at point of entry. However, VAT will also be charged on the intra-Community acquisition of the goods when they arrive in France. There is no provision at present whereby the French university could recover the VAT paid in Ireland at point of entry. This provision ensures that double taxation does not arise and that tax is ultimately charged only in the Member State of final destination of the goods.

55. Goods in transit – miscellaneous provisions

Summary

This section deals with provisions relating to transitional arrangements for goods in transit between new and existing Member States of the European Union (EU). The accession to the EU of a new Member State has the effect of abolishing VAT at the point of entry on goods entering the EU from that new Member State. From the moment of accession transitional measures are needed to address the tax position of goods in transit by continuing to treat these goods as third country goods until they are cleared out of the transit system. The same treatment applies to goods under customs suspension and temporary importation arrangements.

The effect of this section is that the provisions which were in force when the goods were placed under a temporary importation arrangement or under a common/customs transit procedure prior to the date of accession of the new Member State to the EU continues to apply until the goods leave that arrangement or procedure on or after the date of accession.

Details

For the purposes of this section, the date of accession of new Member States to the EU is as follows: **(1)**

- 1 January 1995 in respect of the accession of the Republic of Austria, the Republic of Finland (excluding the Åland Islands) and the Kingdom of Sweden,
- 1 May 2004 in respect of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,
- 1 January 2007 in respect of the accession of the Republic of Bulgaria and Romania, and
- 1 July 2013 in respect of the accession of the Republic of Croatia

Subsection (2) deals with imports to Ireland from a new Member State (MS) before the date of accession. The provisions that were in force when goods were placed under a temporary importation arrangement prior to the date of accession of the new Member State to the EU continue to apply until the goods leave that arrangement on or after the date of accession. **(2)**

Subsection (3) deals with goods under a common or customs transit procedure at the date of accession. The provisions that were in force when the goods were placed under the procedure prior to the date of accession of the new Member State to the EU continue to apply until the goods leave that procedure on or after the date of accession. **(3)**

Subsections (4) and (5) deal with cases where importation into Ireland is deemed to occur – for example, where the goods were in free circulation in a new Member State first. **(4), (5)**

Subsection (6) provides that VAT at the point of entry does not apply to certain importations. **(6)**

Subsection (7) provides that there is no VAT at point of entry for means of transport where the tax due on the importation does not exceed €130 or whose first use was 8 years before the accession date for the relevant country – for example, 1 January 1999 in the case of cars brought into the State from Bulgaria or Romania. **(7)**

56. Zero-rating scheme for qualifying businesses

<u>Summary</u>

This section, together with *paragraph 7(7) of Schedule 2*, sets out a scheme to facilitate business. It provides that traders who derive 75% or more of their annual turnover from zero-rated intra-Community supplies of goods or from exports of goods may apply to have their business inputs (goods, services, intra-Community acquisitions, imports) zero-rated. The zero-rating does not apply to supplies in respect of which VAT would not be deductible in the normal course – for example, petrol, food, drink or most accommodation.

Once a person has been authorised by Revenue to use the scheme, VAT is not charged to him/her in respect of any supplies of qualifying goods and services (as defined).

<u>Details</u>

The terms “authorised person”, “qualifying person”, “qualifying goods” and “qualifying services” are defined for the purposes of the scheme. **(1)**

- Qualifying persons are those persons whose turnover from exports or intra-Community supplies exceeds, or is likely to exceed, 75% of total annual turnover. For the purposes of establishing annual turnover, sale and leaseback transactions are excluded.

– Qualifying goods and services covers taxable goods and services, but excludes the supply or hire of a car, petrol and the provision of food or drink, accommodation (other than qualifying conferences), entertainment services or other personal services. VAT on those goods and services would not be deductible in the normal course, so they are not covered by the scheme.

A person wishing to become an authorised person must fill out a form and supply any information required of them by Revenue. **(2)**

Authorisation certificates under the scheme are issued and cancelled as follows: **(3)**

– Where Revenue is satisfied that a person qualifies they will issue an authorisation certificate to the person. **(3)(a)**

– The authorisation certificate issued in accordance with *paragraph (a)* will be valid for such time as Revenue determine. (This will vary depending on the type of operation involved). **(3)(b)**

– Where an authorised person ceases to qualify, he/she is obliged to notify Revenue in writing of that fact not later than the end of the taxable period in which he/she ceased to be a qualifying person. **(3)(c)**

– Revenue will cancel in writing the authorisation issued under *paragraph (a)* where they are satisfied that the person no longer qualifies to be authorised and such cancellation will have effect from the date specified in the notice. **(3)(d)**

The authorised person is required to forward a copy of the authorisation certificate to each of his/her suppliers in the State. **(4)**

The supplier of taxable goods or taxable services to the authorised person must quote the authorisation number on all invoices and other documents issued in relation to goods or services supplied to the authorised person. **(5)**

There are conditions that must be fulfilled in order for an authorised person to be allowed to import goods at the zero rate— **(6)**

(a) a copy of the authorisation certificate must be produced with the relevant customs entry, and

(b) that customs entry must include both a declaration by the authorised person (or his/her representative) that he/she is an authorised person and a claim for the zero-rating of the importation.

Any subsequent supply by the authorised person of developed property, which has been zero-rated to him/her under this provision, remains liable to VAT. This is ensured by deeming the zero-rated supply to be tax which is deductible under *Chapter 1 of Part 8* for the purposes of *section 93*. **(7)**

Subsection (8) deals with non-deductible items. It ensures that, if a service is received at the zero rate and the service is received for a non-business or exempt purpose (i.e. all the tax would not have been deductible), VAT is payable on the cost of the service as a self-supply. **(8)**

Subsection (9) covers implementation. It allows an officer of Revenue to perform any powers, functions or duties of Revenue specified in this section. **(9)**

57. Remission of tax on goods exported

Summary

This section provides for the zero-rating or repayment of tax in respect of transactions relating to exports and services linked to exports. The general rule is that the zero rate of VAT applies to all supplies of goods that are transported directly by or on behalf of a supplier to a place outside the EU.

Details

Subsection (1) provides for regulations, which will permit remission or repayment of VAT on exported goods. **(1)**

Subsection (2) provides for regulations, which will permit remission or repayment of tax on services directly linked to goods being exported or to the transit of goods outside the State. **(2)**

58. Retail export scheme

Summary

The retail export scheme is a scheme of VAT relief for purchases made by non-EU tourists. Provided certain conditions are met, eligible supplies to tourists can benefit from the zero rate of VAT that is applicable to exports. Broadly, relief is given where the goods are exported within 3 months, the supplier is VAT-registered and has proof that the purchaser is eligible under the scheme, and there is certified customs documentation showing that the goods are exported.

The scheme operates in one of two ways:

– The tourist pays VAT upfront and subsequently gets a refund from the retailer or refund agency when he/she returns the certified documents.

– The tourist gets the goods VAT free from the retailer, and returns the certified documents subsequently. The retailer is liable if the documents are not returned.

Details

The terms “traveller”, “traveller’s qualifying goods” and “VAT refunding agent” are defined for the purposes of the scheme. **(1)**

Goods exported under the retail export scheme are zero-rated provided that a number of conditions are met. Under *subsection (2)* and Regulation 15 of the VAT Regulations 2010, to qualify for zero-rating— **(2)**

– the traveller (tourist) must be eligible,

– the goods must be exported by or for the tourist by the end of the third month after the sale and there must be proof of this,

– the tourist must get the refund in a timely manner,

– any commissions and charges must be explained to the tourist,

– if commissions and charges are expressed in percentages or fractions, then these must relate to the tax amount due,

– a fair exchange rate must be used in any currency conversions, and

– traders must keep adequate records of all sales made under the scheme.

This subsection also zero rates the services of a VAT refunding agency in operating the retail export scheme and in repaying the tax claimed by a traveller in respect of that traveller's qualifying goods.

Revenue may make regulations to introduce an authorisation procedure, if necessary, for categories of accountable persons who wish to make zero-rated supplies to non-EU tourists or to operate as VAT refunding agents. **(3)**

Subsection (4) provides for VAT refund companies or other businesses to claim input credit for the VAT charged to the traveller. **(4)**

If the conditions for zero-rating a supply of goods are not complied with, then that supply of goods is no longer eligible for zero-rating. Also, the supply of services of a VAT refunding agent relating to the supply of those goods is no longer eligible for zero-rating. **(5)**

An officer of Revenue may perform any powers, functions or duties of Revenue specified in this section. **(6)**

PART 8 – DEDUCTIONS

Overview

This Part has 2 Chapters and contains the deductibility provisions for the tax.

Chapter 1 deals with the general rules on deductions for tax borne or paid (*sections 59 to 62A*). In computing the amount of VAT payable in respect of a taxable period, an accountable person may deduct the VAT charged on most goods and services that are used for the purpose of the taxable business. Deductions may not be made for VAT on goods and services used for other purposes. Apportionment is provided for where a trader engages in taxable and exempt activities, or where some portion of the inputs is used for non-taxable purposes. The accountable person must have appropriate documentation (such as a VAT invoice) to be entitled to the deduction.

Chapter 2 covers the capital goods scheme for immovable goods (*sections 63 and 64*). The scheme is part of the system for VAT on property transactions, which was introduced with effect from 1 July 2008. A capital good is defined in terms of immovable goods (property) that have been developed. The section applies only to capital goods on which VAT was chargeable to a person who is carrying on a business activity and, therefore, does not apply to private individuals or those who are not operating in business. The purpose of this scheme is to ensure that VAT deductibility for a property is equitable and proportionate over its "VAT life", which is generally 20 years.

Chapter 1 - General provisions

59. Deduction for tax borne or paid

Summary

This section contains the main rules on deductibility for input VAT. Input VAT is VAT that is charged on goods and services that are used for the purpose of a taxable business or that are used for certain "qualifying activities" defined in the section. Tax that may be deducted by an accountable person is listed in the section and includes VAT chargeable on purchases from other accountable persons that are properly invoiced and VAT on imports and on intra-Community acquisitions. VAT chargeable in respect of reverse charge rules and under special schemes is also deductible. The section also provides for stock-in-trade relief.

Details

The general rule is that input tax is deductible on purchases used for a taxable business. However, input tax is also deductible in respect of '*qualifying activities'*. These are defined in *subsection (1)* as— **(1)**

(a) transport outside the State of passengers and their accompanying baggage,

(b) supplies of goods which, by virtue of the distance sales rules in *section 30*, are deemed to have taken place in the territory of another Member State, provided that the supplier is registered for VAT in that other Member State,

(c)

(d) exempt financial and insurance/reinsurance services specified in *paragraphs 6(1), 7(1) or 8 of Schedule 1* supplied—

  (i) outside the Community, or

  (ii) directly in connection with the export of goods to a place outside the Community,

(e) services consisting of the issue of new stocks, new shares, new debentures and other new securities made to raise capital for an accountable person's taxable supplies, and

(f) supplies of goods or services outside the State that would be taxable supplies if made in the State.

A '*qualifying vehicle'* is defined as one which is first registered for vehicle registration tax (VRT) on or after 1 January 2009 and is in one of the CO_2 emissions bands A, B or C. Some level of deductibility is available for qualifying vehicles – see *subsection (2)(d)* and *section 62*.

Tax that may be deducted by an accountable person (in respect of his/her taxable supplies or qualifying activities) from the amount of tax payable by him/her in a taxable period is as follows— **(2)**

- tax properly charged during the period in respect of goods or services supplied to him/her by other accountable persons, **(2)(a)**
- tax incurred during the period in respect of imports by him/her, **(2)(b)**
- tax chargeable during the period in respect of intra-Community acquisitions, **(2)(c)**
- deductibility of up to 20% of the tax paid for qualifying vehicles where that vehicle is used for at least 60% business purposes. Also, the subsequent disposal of that vehicle by that business is not subject to tax, **(2)(d)**
- tax chargeable during the period in respect of supplies of natural gas and electricity for which tax the recipient is liable under *section 10(1)* provided that recipient would be entitled to deduct this tax under normal deductibility rules if it was charged to him/her by another accountable person, **(2)(e)**
- tax chargeable during the period, in respect of goods which are installed or assembled in the State by a foreign supplier, for which tax the recipient is liable under *section 10(2)*, provided that recipient would be entitled to deduct this tax under normal deductibility rules if it was charged to him/her by another accountable person, **(2)(f)**
- tax chargeable during the period in respect of reverse charge services under *section 12(3) or (5) or 17(1),* **(2)(g)**
- tax chargeable during the period in respect of supplies of greenhouse gas emission allowances for which tax the recipient is liable *under section 16(2)* provided that recipient would be entitled to deduct this tax under normal deductibility rules if it was charged to him/her by another accountable person, **(2)(h)**

– tax chargeable during the period in respect of supplies of construction services for which tax the recipient (i.e. the principal contractor) is liable provided that principal would be entitled to deduct this tax under normal deductibility rules if it was charged to him/her by another accountable person, **(2)(i)**

– tax chargeable during the period in respect of supplies of scrap metal for which tax the recipient is liable under *section 16(4)* provided that recipient would be entitled to deduct this tax under normal deductibility rules if it was charged to him/her by another accountable person, **(2)(ia)**

– tax chargeable during the period in respect of supplies of construction work for which tax the recipient is liable under *section 16(5)*, subject to the usual deductibility rules, **(2)(ib)**

– tax chargeable during the period in respect of supplies of gas or of electricity for which tax the recipient is liable under *section 16(6)(b)* provided that recipient would be entitled to deduct this tax under normal deductibility rules if it was charged to him/her by another accountable person, **(2)(ic)**

– tax chargeable during the period in respect of supplies of a gas or an electricity certificate for which tax the recipient is liable under *section 16(7)(b)* provided that recipient would be entitled to deduct this tax under normal deductibility rules if it was charged to him/her by another accountable person, **(2)(id)**

– tax chargeable during the period in respect of reverse charge VAT under *section 16(1), 94(6)(a) or (7) or 95(8)(c) to (e)* in relation to an assignment/surrender of immovable property, **(2)(j)**

– tax chargeable during the period in respect of goods treated as self-supplies, **(2)(k)**

– residual tax in respect of intra-Community inter-branch supplies made by the accountable person, **(2)(l)**

– **(2)(m)**

– tax chargeable during the period in respect of services deemed to be self-supplied in accordance with regulations, **(2)(n)**

– tax deemed to be charged during the period in respect of the flat-rate addition specified in *section 86(1)*, **(2)(o)**

– tax chargeable during the period in respect of supplies of investment gold which are subject to the reverse charge mechanism under *section 90(5)(a)*, **(2)(p)**

- tax due during the period in respect of alcohol under suspension arrangements supplied under *section* 92. **(2)(q)**

Where transfer of business provisions *under section* 20*(2)(c)* apply, deductibility is allowable only in respect of the VAT chargeable on services directly related to the transfer of ownership of goods that would be taxable but for the application of that provision. **(2A)**

Where a farmer or fisherman is taxable only in respect of his/her intra-Community acquisitions or receipt of certain services from abroad, the tax due on the acquisition or service is not deductible. However, if the farmer provides racehorse training services and the acquisition or service specifically relates to racehorse training, then he/she will be entitled to deduct any such tax. **(3)**

Stock-in-trade relief is provided for as follows: **(4)**

- *Paragraph (a)* provides that a person who becomes an accountable person, whether by election or because his/her turnover has exceeded the prescribed limit, is entitled to a tax credit for the estimated element of VAT in the value of stock-in-trade held by him/her at the commencement of the first taxable period for which he/she becomes accountable for tax. The procedures for calculating and claiming the relief are set out in Regulation 16 of the VAT Regulations 2010. **(4)(a)**

- *Paragraph (b)* is designed to obviate double relief. A taxable person is not required to issue an invoice for goods delivered to another taxable person until the 15th of the month following that in which the actual supply takes place. It could happen, therefore, that a trader who becomes registered for the first time would hold stock immediately before the date of registration. This stock would not be invoiced to him/her until after that date. **(4)(b)**

  He/she would be entitled to claim credit in the normal way for the tax shown on such an invoice. The paragraph ensures that he/she will not also be able to claim relief under the provision for the tax element in any part of the stock to which the invoice relates which was held by him/her immediately before he/she became taxable.

There is provision for the repayment by Revenue of any excess of VAT input credit over VAT liability. The basis on which the repayment is to be calculated is set out in the main refunds provision in *section 99(1)* but is subject to the group rules in *section 99(2)* and to the unjust enrichment provisions in *section 100*. **(5)**

60. General limits on deductibility

Summary

This section sets out the general limits on deductibility. Broadly speaking, expenditure on food and drink, accommodation or entertainment is not deductible, even if the goods and services are acquired or used for the purpose of a taxable business. There are special provisions under which deductibility is allowed in respect of certain business conferences.

Details

The terms 'delegate', 'qualifying accommodation', and 'qualifying conference' are defined for the purposes of the section – deductibility is allowed in respect of these supplies, although it is not otherwise allowed for accommodation. **(1)**

'Motor vehicles' are also defined – basically, these are motor cars and motor cycles and variations thereof, apart from those which would normally carry more than 16 people; ambulances are also excluded.

The various supplies on which tax is not deductible are as follows: **(2)(a)**

(i) Food, drink, accommodation (other than qualifying accommodation in connection with attendance at a qualifying conference) or other personal services for the accountable person, his/her agents or employees, except where such a supply relates to a supply of services on which a liability to tax arises (for example, a canteen). Input credit for expenditure incurred on building or fitting out a building, for the purposes of providing accommodation (other than qualifying accommodation) is also disallowed.

(ii) VAT paid in respect of expenditure by an advertising agency on food, drink, accommodation or other entertainment services where it forms part of an advertising service. In practice, the cost (inclusive of VAT) of this expenditure will form part of the overall cost to the agency in providing the advertising service. VAT charged by the advertising agency to its client in respect of the advertising service itself is deductible, subject to the normal rules.

(iia) Expenditure incurred on the acquisition or development of immovable goods, on or after 1 January 2011, even where such goods form part of the assets of a business, to the extent that an accountable person uses those goods for any purpose other than for business.

(iii) Entertainment expenses incurred by accountable persons, their agents or their employees. Input credit is also disallowed for expenditure incurred on a building or fitting out a building or facility for the purpose of the entertainment.

(iv) Subject to *section 59(2)(d),* the purchase of motor vehicles, other than those acquired as stock-in-trade or for onward supply by a finance house as part of a hire purchase type agreement or for the purposes of hiring or for use in driving instruction in a driving school.

(v) Petrol, other than as stock-in-trade.

(vi) Contract work involving the handing over of goods where such goods are not deductible.

Paragraph (b) clarifies that references to accommodation in paragraph (a)(i) and to entertainment in paragraph (a)(iii) and includes certain expenditure on buildings. **(2)(b)**

Accountable persons are prohibited from deducting tax included in the price of second-hand goods or second-hand means of transport bought from dealers operating under the margin scheme for taxable dealers or the margin scheme for auctioneers – see *sections 87 and 89.* **(3)**

61. Apportionment for dual use inputs

<u>Summary</u>

This section deals with deductibility for businesses engaged in making taxable supplies and who also engage in other activities. It provides that an accountable person is only entitled to deduct VAT on his or her purchase of 'dual-use inputs' to the extent that these inputs are used in making taxable supplies having due regard to the full range of activities carried out by the accountable person.

Traders who engage in both taxable and exempt supplies are required to determine the amount of input VAT, which correctly reflects the use to which the dual-use inputs are put.

<u>Details</u>

Some terms are defined for the purposes of the section. **(1)**

The accountable person is entitled to deduct the proportion of tax on his or her purchase of dual-use inputs that is attributable to his or her deductible supplies and activities. **(2)**

The amount of tax which an accountable person can recover in respect of a qualifying vehicle as defined in *section* 59*(1)* is fixed at a maximum of 20% of the tax paid on that vehicle provided the conditions set out in *section* 59*(2)(d)* are met. **(3)**

The proportion of tax deductible must be calculated on the basis of the ratio of taxable turnover to total turnover, unless that method does not correctly reflect the taxable use of dual-use inputs or have due regard to the range of the person's activities. **(4)**

Where the turnover method of apportionment of dual-use inputs does not correctly reflect the extent of the use of the inputs for taxable and non-taxable activities or have due regard to the range of the activities of the business, that method must not be used and any alternative method which does so must be applied. **(5)**

Where it is necessary to ensure the correct proportion of tax deductible, an accountable person must calculate separate proportions of tax deductible for the different sectors of his or her business, and must exclude certain incidental transactions such as property transactions from the calculation. **(6)**

Article 174 of the VAT Directive provides for these options with an aim of ensuring that the method used gives the correct result.

The proportion of tax deductible for a bi-monthly taxable period can be adjusted having regard to the annual turnover for that person's accounting year. This provision is necessary to take into account the annual profile of the business rather than just a two-month profile. The detail of how this works is provided for in Regulation 17 of the VAT Regulations 2010. **(7)**

62. Reduction of tax deductible in relation to qualifying vehicles

Summary

This section provides for a claw-back of tax deducted in respect of a qualifying vehicle in two circumstances. The first is where the vehicle is sold within 2 years of its purchase, acquisition or importation. The second is where the vehicle is used for less than 60% business purposes in a taxable period. A qualifying vehicle is defined as one which is first registered for vehicle registration tax (VRT) on or after 1 January 2009 and is in one of the CO_2 emissions bands A, B or C.

The section sets out two formulas for calculating the tax to be clawed back. Both formulae are based on a 6-month timeframe, with less tax clawed back as the period of time increases.

Details

The first circumstance under which the clawback operates is where the vehicle is sold within 2 years of its purchase, acquisition or importation. **(1)(a)**

Under the formula, the clawback is based on the length of time that the accountable person has the vehicle: **(1)(b)**

- less than 6 months, 100% clawback
- 6 months to 12 months, 75% clawback
- 12 months to 18 months, 50% clawback
- 18 months to 24 months, 25% clawback
- over 24 months, no clawback.

The second circumstance under which the clawback operates is where the vehicle is used for less than 60% business purposes in a taxable period. **(2)(a)**

The formula operates in the same way as outlined above. **(2)(b)**

62A. Adjustment of tax deductible in relation to unpaid consideration

Summary

This section provides that where a person deducts VAT in a taxable period but has not, within 6 months of the end of that taxable period, paid the supplier for the goods or services, then the amount of VAT deductible will be reduced by the amount of VAT relating to the unpaid consideration i.e. the VAT deducted relating to the unpaid consideration must be repaid to Revenue. A re-adjustment is provided for in the event of subsequent payment or part payment for the goods or services.

This provision relates to VAT deducted in taxable periods commencing on or after 1 January 2014.

Details

Where an accountable person deducts VAT charged to him or her in a taxable period referred to as the "initial period" and consideration for the related supplies of goods or services remains unpaid or partially unpaid after 3 taxable periods (i.e. 6 months) of the initial period, an adjustment of the amount of tax deducted is required. **(1)(a) & (b)**

The adjustment must be made in the third taxable period following the period in which tax was deducted and includes the formula for calculation of the adjustment. **(2)**

Where an adjustment is made and the person subsequently pays the full consideration or part thereof, a corresponding re-adjustment should be made in the period in which the full or partial consideration was paid. **(3)**

Where there are reasonable grounds for not having paid the full consideration or part thereof, an adjustment will not be required. **(4)**

This subsection allows for the making of regulations, if necessary, in relation to the operation of the section.

Chapter 2 - Capital goods scheme

63. Interpretation and application

Summary

This section sets the scene for the capital goods scheme by defining terms and outlining the scope of the scheme.

Details

The Chapter applies to capital goods (properties) on which VAT is chargeable to a taxable person or a person who carries on a business in the State. It does not therefore apply to private individuals or those who are not operating in business. **(1)**

A number of terms are defined for the purposes of the Chapter. Key concepts are outlined below. **(2)**

- the initial interval for the property is the first 12 months in the life of the capital good.
- the second interval is the period from the end of the initial interval to the end of the accounting year of the capital goods owner. (This means that all subsequent intervals will be aligned with the owner’s accounting period.)
- each interval after the second is called a subsequent interval and is aligned with the owner’s accounting year.
- total tax incurred is defined in terms of the amount charged to the owner on acquisition/development of the property.
    - In a transfer of business case (where there is no VAT and the property is “new”) it is defined as the amount that would have been charged.
    - In a *section 56* case (where the property is supplied tax free under the special arrangements for qualifying businesses) it is defined as the amount that would have been chargeable if the arrangements did not apply.

64. Capital goods scheme

Summary

This section contains the rules for the operation of the capital goods scheme (CGS).

Deductibility is allowed initially by reference to the first twelve months of full use. The scheme requires an annual review by the taxable person of the use to which a property is put over the life of the property (in terms of taxable or exempt use). Where there is a change in that use an adjustment of VAT deductibility is required to reflect the difference between the use in the initial twelve months and the use in the year being reviewed. Because adjustments do not apply unless there is a change in taxable use of a property, the scheme has very little impact on the majority of businesses whose entitlement to deduct VAT does not vary from year to year.

The section includes provisions to deal with sales, lettings and refurbishments of buildings by tenants. There are also anti-avoidance rules.

Details

Under the CGS, adjustments are made in annual time periods known as intervals. The adjustment period – or "VAT life" of the property – is the period during which adjustments to deductions might be made, and generally has 20 intervals. A refurbishment has 10 intervals. The adjustment period for lettings, where the landlord exercises or terminates an option to tax, has the number of full intervals +1, where full intervals are calculated under the sales rules in *subsection (6)(b)*. **(1)(a)**

Where an owner transfers a capital good under the transfer of business rules, his/her adjustment period for that property ends on the time of the transfer. **(1)(b)**

An adjustment at the end of the first 12 months (the 'initial interval') is required in certain circumstances. These obligations are set out in *subsection (2)*. Essentially, if the percentage of taxable use in a property during the initial 12 months differs from the percentage of the VAT deducted on the acquisition or development of that property, then an adjustment is required. **(2)**

This amount is the benchmark figure for comparison purposes under the scheme for the remainder of the life of the property.

Example:

X ltd. purchases a property on 13 September 2010. Cost = €10million + VAT €1.35million. This is the "total tax incurred". X deducts all the VAT. The "base tax amount" is this figure divided by the number of intervals = €1.35million /20 = €67,500.

Initial interval ends 12 September 2011. In the initial interval, property was used for 80% taxable use. An adjustment is needed. The "total reviewed deductible amount" is €1.35m x 80% = €1.08million.

A = €1.35million. B = €1.08million. Formula A – B = €270,000. This is the amount payable to Revenue for the taxable period immediately after the end of the initial interval.

Under the CGS, additional VAT is either payable or deductible depending on whether or not the taxable business use increases or decreases compared with the first year. Obligations in respect of the second and subsequent intervals are set out in *subsection (3)*. The adjustment is based on 1/20th of the initial VAT deducted. **(3)**

Any change in the business use of a property during each year of the life of a property when compared with the initial business use during the first year following acquisition is required to be adjusted for on an annual basis.

Example (following on from above figures):

Suppose the proportion of deductible use changes from 80% to 70% in interval 6. The "interval deductible amount" is the base tax amount multiplied by this proportion = €67,500 x 70% = €47,250

The "reference deduction amount" is the figure for the total reviewed deductible amount (= B) divided by the number of intervals. €1.08million/ 20 = €54,000.

C = €54,000. D = €47,250. Formula C – D = €6,750. This is tax due that is payable to Revenue for the taxable period immediately after the end of the sixth interval.

There are special rules – known as the "big swing" rules – to deal with significant percentage changes in business use. Where there is a change in taxable business use of more than 50% in any year when compared with the initial 12 months, an adjustment is required based on the full amount, not one-twentieth as is normally the case. When this happens, the benchmark figures have to be rebalanced. **(4)**

Example:

Z ltd. buys a property for €3m plus VAT €405,000 ("total tax incurred"). The "base tax amount" is €405,000/ 20 = €20,250. Z. ltd deducts 30% of the VAT.

The "total reviewed deductible amount" is €405,000 x 30% = €121,500. The "reference deduction amount" is €121,500 /20 = €6,075.

The initial interval proportion of deductible use = 30%; no adjustment needed. 5 years later, Z's business changes and the "proportion of deductible use" increases to 90%. This triggers a big swing adjustment because the change is more than 50%. The "interval deductible amount" = €20,250 x 90% = €18,225.

C = €6,075. D = €18,225. N = number of intervals remaining plus 1 = 16. Formula C – D x N = - €194,400. As D is greater than C, Z ltd is given a VAT credit of €194,400 in the taxable period following the end of the interval.

The benchmark figures are also adjusted, as the "initial interval proportion of deductible use" is changed from 30% to 90%. (The total tax and base tax figures do not change).

Special rules are needed for dealing with letting of properties, to reflect the fact that the letting of property is exempt from VAT, but that an option is allowed in certain circumstances whereby a landlord can opt to charge VAT on the rents. Where the landlord exercises an option on a letting of a property that had previously been exempt, he/she is given a credit for the residual VAT. Where a landlord terminates an option to tax, there is a clawback of residual VAT. **(5)**

Where a landlord terminates this option (*paragraph (a)*) or exercises this option (*paragraph (b)*) in accordance with the rules in *section 97*, an immediate adjustment of the VAT deductibility is triggered.

Sales of capital goods are dealt with in *subsection (6)*. If the person selling the property was entitled to deduct input VAT on the acquisition or development costs and the property is sold into an exempt use ("an exempt sale"), there is a VAT clawback. If the person selling the property did not get full deductibility for the VAT on the acquisition or development costs and the property is sold into a taxable use ("a taxable sale"), there is a VAT credit. **(6)**

The key concepts are:

- if the sale is taxable, the capital good is treated as being used for taxable purposes by the seller and he/she gets a credit (i.e. an increase in deductible VAT).

- if the sale is exempt, the capital good is treated as being used for exempt purposes by the seller and he/she must pay additional VAT (i.e. there is a clawback).

The same rules apply to transfers of "new" capital goods under the transfer of business provisions. (See *subsection (10)(c)* for transfer of business rules for "old" capital goods.)

Where: **(6)(a)**

- the sale is taxable (or would be taxable, if the transfer of business rules didn't apply), and

- the seller (owner) was not entitled to deduct all of the original VAT charged,

then the owner gets a proportionate credit based on the non-deductible input VAT and the number of intervals (years) remaining in the VAT life of the property.

Where: **(6)(b)**

- the sale is exempt, and

- the seller (owner) was entitled to deduct some/all of the original VAT charged,

then the owner must pay a clawback amount based on the VAT he/she deducted and the number of intervals (years) remaining in the VAT life of the property.

Where part of a capital good is transferred under the transfer of business rules, then total tax, deductible amount, etc. are all adjusted fairly for the rest of the VAT life of the property. **(6)(c)**

If a tenant has a leasehold interest in a property and carries out development work on a property, he/she creates a capital good and is the capital goods owner in respect of that refurbishment. The adjustment period is 10 years. **(7)**

Where a tenant, who is a capital goods owner in respect of a refurbishment of a property, assigns or surrenders a lease during the 10-year period that applies to such refurbishments, there is a clawback of VAT deducted. **(7)(a)**

The claw-back is based on the number of years remaining in the VAT life and is calculated using the rules in *subsection (6)(b)*.

There is, however, a relieving provision for this rule. Where the tenant **(7)(b)**

- was entitled to deduct all of the VAT incurred on the refurbishment, and
- enters into a written agreement with the person to whom the lease is being assigned or surrendered,

then that person can "take-over" the obligations under the scheme and there is no claw-back required from the tenant.

Where an agreement under *subsection (7)(b)* is in place, the person to whom the lease is being surrendered/assigned takes over all the obligations in respect of the capital good. **(7)(c)**

If the refurbishment is destroyed by the tenant, then no claw-back arises. **(7)(d)**

Subsection (8) is an anti-avoidance provision that applies to sales of complete properties between connected persons. Essentially, the provision works by comparing the VAT deducted on the acquisition of a property with the VAT being charged on its sale. Where the VAT being charged is less than the VAT that was deducted, there is a clawback of the difference between the two amounts from the person making the supply. This ensures that the VAT deducted is protected and that connected persons cannot use the provisions of the section to gain an unjustified advantage. **(8)**

Subsection (8A) is an anti-avoidance provision that applies to sales of incomplete properties between connected persons. Essentially, the provision works by comparing the VAT deducted on the acquisition of a property with the VAT being charged on its sale. Where the VAT being charged is less than the VAT that was deducted, there is a clawback of the difference between the two amounts from the person making the supply. This ensures that the VAT deducted is protected and that connected persons cannot use the provisions of the section to gain an unjustified advantage. **(8A)**

The anti-avoidance rule in *subsection (8)* does not apply in certain circumstances. Under the *subsection (8)* "disposal test", the clawback is payable by the person making the supply. Under *subsection (9)*, the clawback will not apply if the seller and the purchaser agree in writing that the purchaser will take on the CGS liabilities in relation to the property. The purchaser 'steps into the shoes' of the seller accepting responsibility for all CGS obligations of the seller. No VAT is chargeable on the supply and no new CGS life begins at the time of the supply. **(9)**

The VAT-free acquisition of a capital good under the *section 20(2)(c)* (transfer of business) rules or under the *section 56* (zero-rating scheme for qualifying businesses) rules cannot be exploited by an entity that would not be entitled to full VAT deductibility. **(10)(a)**

In these cases, the capital goods owner is deemed to have claimed a deduction of the tax that would have been chargeable.

Where an owner transfers a capital good under the transfer of business rules in the "new" period and the recipient (transferee) does not have full deductibility, then the transferee is deemed to have been charged the VAT that would have applied (if it was not a transfer of business scenario). The transferee must pay an amount to Revenue equal to the difference between **(10)(b)**

- the amount of VAT that would have applied, as above, and
- the amount that he/she would have been able to deduct (but for the transfer of business scenario).

A situation may arise where a property is transferred as part of a transfer of a business as a going concern in circumstances where the supply of the property would be exempt from VAT if sold at that time – in other words, a transfer of business outside the "new" period. **(10)(c), (d)**

In this case, the transferee becomes the successor to the transferor and "takes over" the liabilities of the property under the scheme. In other words, he or she steps into the transferor's shoes and inherits the adjustment period of the property. The transferor is obliged to pass on certain information for this purpose.

If a capital good is destroyed, there are no further obligations under the scheme. **(11)**

An owner must create and maintain a "capital good record" in respect of each capital good. This record will be used by Revenue in audit situations and also must be passed on in certain circumstances when the obligations under the scheme are being passed on from one person to another. **(12)**

Paragraph (a) contains definitions; **(12A)(a)**

Paragraphs (b), (ba) and (c) provide that where a receiver is appointed or a mortgagee takes possession of a capital good, the obligations of the capital good owner are transferred to the receiver or mortgagee for the duration of the receivership or possession. These obligations include maintaining the capital good record, calculating any adjustment in deductibility as a result of a change of use of the capital good and remitting any tax due as a result of that adjustment. Where an adjustment under the capital goods scheme results in an increase in deductibility, the receiver or mortgagee will get the benefit of that increase; **(12A)(b),(ba),(c)**

Paragraphs (d) and (e) provide that where the receivership or possession ends without disposal of the capital good (i.e. it reverts back to the owner), the obligations under the capital goods scheme revert back to the owner; **(12A) (d), (e)**

Paragraph (f) provides for apportionment of liability arising from a capital goods scheme adjustment where the receivership or possession commences or ends (or both) during a capital goods scheme interval; **(12A) (f)**

Paragraph (g) provides for apportionment of an entitlement to an increase in deductibility as a result of a capital goods scheme adjustment where the receivership or possession commences or ends (or both) during a capital goods scheme interval; **(12A) (g)**

Paragraph (h) provides that where the obligations of the capital good owner are transferred to a receiver or mortgagee those obligations shall also transfer to any subsequent receiver appointed or mortgagee who takes possession of the good. **(12A) (h)**

The Revenue Commissioners may make regulations for this section. (See Regulation 18 of the VAT Regulations 2010). **(13)**

PART 9 – OBLIGATIONS OF ACCOUNTABLE PERSONS

Overview

This Part, which contains 7 Chapters, provides the rules relating to registration, invoicing and other documents, and returns and payments of VAT. It also contains rules on statements required by traders in respect of supplies of goods and services to other Member States of the EU, and provisions in relation to records that must be kept for VAT purposes.

Chapter 1 deals with the requirement to register that is placed on persons accountable for VAT (*section 65*).

Chapter 2 covers the issue of invoices and other documents (*sections 66 to 73*). Invoicing rules are very important in VAT. The information given on invoices and credit notes normally establishes the VAT liability of the supplier and the entitlement of the customer to a VAT deduction. Accountable persons are legally obliged to issue and retain these documents. Registered persons normally account for VAT on the basis of invoices issued and sales made by them.

Chapter 3 opens with 2 sections on the time that tax is due on supplies of goods and services and on intra-Community acquisitions (*sections 74 and 75).* It also deals with returns and payments of tax (*sections 76 to 79*). Broadly, returns must be filed and tax paid by the 19th of the month following the taxable period in which the supply takes place. Other rules apply in certain situations.

Chapter 4 contains the provisions for traders who account for VAT on the basis of payments actually received, as opposed to invoices issued (*section 80*).

Chapter 5 contains the expression of doubt provisions available to a taxpayer (*section 81*).

Chapter 6 covers recapitulative statements of intra-Community supplies of goods and services that must be submitted periodically by traders who do business across the EU (*sections 82 and 83*).

Finally, **Chapter 7** deals with the basic duty imposed on accountable persons to keep records of all business transactions that affect their VAT liability (*sections 84 and 85*).

Chapter 1 - Registration

65. Registration

Summary

This section provides for the registration by Revenue of persons liable for VAT and places an obligation on accountable persons to furnish certain particulars required in connection with registration.

Generally speaking, registration is effective from the beginning of the next taxable period of 2 months after the date on which the completed application is received, or earlier if the applicant and Revenue agree.

Details

Revenue is required to set up a register of persons who are, or who may become, accountable. The requirement to register accountable persons also extends to liquidators, receivers and other persons who dispose of goods or supply services that are deemed to be supplied by accountable persons under *section 22(3) or section 28(4) or (5).* **(1)**

Revenue is required to assign a number to each person registered for VAT. **(2)**

Revenue may cancel a number which has been assigned where the person does not become or ceases to be an accountable person. **(2A)**

There is an obligation on accountable persons to provide the necessary information for registration within 30 days after the day on which they become an accountable person. **(3)**

A person such as a receiver or liquidator who disposes of goods or supplies services forming part of the assets of an accountable person towards the satisfaction of a debt, or in the course of a company winding up, must, within 14 days of such disposal or such supply, apply for registration for the purpose of accounting for tax. **(4)**

Note that Regulation 19 of the VAT Regulations 2010 deals with registration.

Chapter 2 - Invoicing

66. Issue of invoices and other documents

Summary

This section deals with the issue of invoices by accountable persons. It also sets out the rules on how such invoices may be issued electronically. Note that the actual particulars that must appear on invoices – such as names and VAT numbers – are set out in regulations. There are also regulations governing the form that invoices may take.

The section also provides for the issue of documents by suppliers of carbon credits, suppliers of scrap metal, by building sub-contractors to principals, by suppliers of construction services to connected persons, by suppliers of gas or electricity to taxable dealers or by suppliers of gas or electricity certificates to other taxable persons under reverse charge arrangements. In these cases, the documents contain all the details that would be on an invoice except the rate of tax and the amount of tax payable, and also show that the customer is liable under the reverse charge.

Details

Subsection (1) provides that where an accountable person supplies goods or services to another accountable person, to a public body (as defined in *section 2(1)*), to an exempt entity, to a person (other than a private individual) in another Member State, to a person in another Member State where the reverse charge rules apply, or who supplies goods to an unregistered person in another Member State under the distance-selling rules, he/she must issue a VAT invoice in paper or electronic format in accordance with regulations. See Regulation 20 of the VAT Regulations 2010. **(1)(a)**

Simplified invoices to the amount of €100 or less may be issued in relation to certain transactions. **(b)**

Summary invoices may be issued where multiple supplies are made to the same customer during a calendar month. **(c)**

Subsection (2) provides for the electronic issue of invoices or other documents where there is prior agreement between the person issuing and the person receiving the invoice and the electronic system used to issue or receive the invoice conforms with specifications as are required by regulations. Traders do not require an authorisation from Revenue to issue invoices electronically. However, Regulation 21 of the VAT Regulations 2010 sets out the conditions and the systems specifications that must be met for those invoices etc. to be valid for VAT purposes. **(2)**

Subsection (2A) provides that the person issuing or receiving an invoice shall use business controls to ensure the authenticity of the origin of the invoice, the integrity of its contents and provide for a reliable audit trail. **(2A)(a)**

Evidence of complying with paragraph (*a*) shall be furnished if required by the Revenue Commissioners. **(b)**

Subsection (3) relates to the reverse charge for domestic supplies of greenhouse gas emission allowances, which came into effect on 8 April 2010. It provides that the supplier must issue a document to the recipient indicating that the recipient is liable to account for the tax chargeable on the supply. This document must contain the details required on a VAT invoice, other than the rate of tax chargeable and the amount of tax payable. **(3)**

Subsection (4) relates to the reverse charge for construction services provided by a subcontractor to a principal contractor, which came into effect on 1 September 2008. The subcontractor in the State must issue a document in respect of the supply of construction services in the State for which the principal contractor is liable to pay the tax. This document must indicate that the principal contractor is liable to account for the tax chargeable on the supply. The document must contain the details required on a VAT invoice, other than the rate of tax chargeable and the amount of tax payable. **(4)(a)**

Where the subcontractor and principal contractor agree, this document may be issued by the principal contractor and may be treated as a VAT invoice on which the principal contractor, while accounting for the VAT, may take a simultaneous deduction for the VAT incurred, subject to the usual rules regarding deductibility. **(4)(b)**

Subsection (4A) relates to the reverse charge mechanism for the scrap metal industry, which came into effect on 1 May 2011. It provides that the supplier of the scrap metal must issue a document to the recipient indicating that the recipient is liable to account for the tax chargeable on the supply, unless the recipient and the supplier of the scrap metal agree that the document can be drawn up by the recipient. This document must contain the details required on a VAT invoice, other than the rate of tax chargeable and the amount of tax payable. **(4A)**

Subsection (4B) relates to the reverse charge mechanism for construction services supplied by an accountable person to a connected person who is a taxable person, which came into effect on 1 May 2012. It provides that the supplier of construction services must provide a document to the recipient indicating that the recipient is liable to account for the VAT, unless the recipient and the person who supplied the construction services agree that the document can be drawn up by the recipient. This document must contain the details required on a VAT invoice, other than the rate of tax chargeable and the amount of tax payable. **(4B)**

Subsection (4C) relates to the reverse charge mechanism for gas or electricity supplied by a taxable person who carries on a business in the State to a taxable dealer who carries on a business in the State, which came into effect on 1 January 2016. It provides that the supplier of the gas or electricity must provide a document to the recipient indicating that the recipient is liable to account for the VAT, unless the recipient and the supplier of the gas or electricity agree that the document can be drawn up by the recipient. This document must contain the details required on a VAT invoice, other than the rate of tax chargeable and the amount of tax payable. **(4C)**

Subsection (4D) relates to the reverse charge mechanism for a gas or an electricity certificate supplied by a taxable person who carries on a business in the State to another taxable person who carries on a business in the State, which came into effect on 1 January 2016. It provides that the supplier of the gas or electricity certificate must provide a document to the recipient indicating that the recipient is liable to account for the VAT, unless the recipient and the supplier of the gas or electricity agree that the document can be drawn up by the recipient. This document must contain the details required on a VAT invoice, other than the rate of tax chargeable and the amount of tax payable. **(4D)**

67. Amendments to invoices

Summary

This section sets out the rules in relation to amendments to invoices. Typically, amendments are needed when the price changes after the issue of the original invoice or when a wrong rate of VAT was charged.

Details

Subsection (1) sets out the procedures to be followed by an accountable person if the consideration is changed after he/she has issued an invoice to another accountable person. Two circumstances are provided for. **(1)**

- Firstly, if the consideration is increased, he/she is required to issue a further invoice setting out the amount of the increase and the appropriate amount of tax. **(1)(a)**

- Secondly, if the consideration is reduced, or a discount is allowed, he/she is required to issue a credit note setting out the amount of the reduction or discount, as the case may be, and the appropriate amount of tax. (But see *subsection (5)* for exceptions to this rule). **(1)(b)**

Note that where an accountable person has a credit note, the amount that he or she can deduct is reduced by the amount on the credit note.

Following normal commercial practice, provision is made for the substitution of a debit note for a credit note. This can be done only by agreement between the parties. **(2)**

- The person who issues a debit note is deemed to have received a credit note. **(2)(a)**

- The person who accepts a debit note is deemed to have issued a credit note. **(2)(b)**

Subsection (3) provides for the issue of a credit note cancelling an invoice where a higher rate of VAT was incorrectly charged and for the subsequent issue of a revised invoice. **(3)**

Examples of where this might arise:

- A supplier might charge VAT in relation to an intra-Community supply because he/she is not sure that the goods will leave the State, but is satisfied subsequently that the supply should have been zero-rated.

- A supplier might charge tax on an internal supply at the standard rate when a reduced rate applied.

Subsection (4) is linked to *section 74(4)* relating to deposits retained by a supplier in the event of a cancellation of the whole transaction by the customer. The provision allows the supplier to reduce his or her tax liability by the amount of tax accounted for on a deposit for the supply of goods or services where subsequent to that payment the customer cancels the transaction. In those circumstances the supplier must issue to the customer a document, which is to be treated as a credit note. Where the customer is an accountable person he or she must adjust his or her deductibility by the amount on that document. **(4)**

By way of background, this provision was enacted following an ECJ ruling concerning deposits paid for hotel accommodation. However, it covers the VAT treatment of forfeited deposits, not alone in the hotel services sector, but also in relation to the supply of other services and goods.

Accountable persons are authorised to avoid tax adjustments in regard to discounts and price adjustments in transactions between themselves. If, after the issue of an invoice, they confine the subsequent reductions to the consideration exclusive of tax, credit notes need not be issued and no adjustment of the tax liability of either party need be made. **(5)**

Since any reduction in liability on the part of the accountable person issuing the credit note would be balanced by a reduction in the tax credit on the part of the person receiving the credit note, there will be no net loss or gain to Revenue if no credit note is issued.

Subsection (6) sets out cases where *subsection (5)* does not apply. A credit note must be issued in the case of a seller who operates on the cash-receipts basis of accounting (see *Chapter 4 of this Part*) and also in the case of forfeited deposits (*subsection (4)*). **(6)**

68. Flat-rate farmer invoices and other documents

Summary

This section covers the rules in relation to invoices and other documents that must be issued by flat-rate farmers in respect of the supply of an agricultural produce or an agricultural service. Changes in invoices, credit notes, debit notes and settlement vouchers are also covered.

Details

The invoice that an unregistered farmer is obliged to issue under *section 86* in respect of the supply of agricultural produce or an agricultural service must be issued if the purchaser— **(1)**

(a) requests the issue of the invoice,

(b) provides and completes the invoice, and

(c) gives the farmer a copy.

Nevertheless, the unregistered farmer may, if he/she wishes, issue an invoice even if these conditions are not met.

Subsection (2) provides for a situation in which after the issue of the original flat-rate farmer's invoice the consideration is increased or reduced. It provides that: **(2)**

- If the consideration is increased, the farmer must issue a further invoice for the additional amount on the same terms as the original invoice. **(2)(a)**

- If the consideration is reduced, the farmer must issue a "farmer credit note." The amount that the customer can deduct under *Chapter 1 of Part 8* or is entitled to be repaid by way of refund in respect of exports must be reduced accordingly. **(2)(b)**

Subsection (3) provides for the issue of a "farmer debit note" by a person entitled to receive a "farmer credit note" in accordance with the general rules relating to debit notes – see *section 67(2).* **(3)**

Subsection (4) authorises the use of a settlement voucher instead of an invoice required to be issued by a farmer in respect of supplies to registered persons. The settlement voucher is issued by the person to whom goods or services are supplied. This follows normal commercial practice, but it is provided that the substitution can only be made by agreement between the parties. **(4)**

- The person who issues the settlement voucher is deemed to have received an invoice. **(4)(i)**

- The person who accepts the settlement voucher is deemed to have issued an invoice. **(4)(ii)**

All the provisions of the VAT Act that apply to credit notes and debit notes generally will also apply to farmer credit notes and farmer debit notes respectively. **(5)**

Note that two provisions that are relevant are the inspection provision in *section 108* and the penalty provisions in *section 115.*

Subsection (6) provides that an invoice, settlement voucher or other document showing the flat-rate addition cannot be issued by or on behalf of a flat-rate farmer in respect of supplies of agricultural produce or services specified in an order made under *section 86A.* **(6)**

69. Invoices or credit notes – errors, etc.

Summary

This section deals with matters such as incorrect VAT on documents, VAT invoices issued by unregistered persons, the issue of flat-rate invoices by persons other than farmers and the issue of a flat-rate invoice for an excessive amount by a flat-rate farmer. In all cases, the tax so invoiced is payable to Revenue. Penalties may also arise.

Details

If an accountable person issues an invoice showing tax in excess of the correct amount appropriate to the consideration, he or she becomes liable to pay the excess to Revenue. This provision is designed to discourage abuse by accountable persons who might be tempted to pass on tax credits to their customers in excess of the amounts that they are liable to pay on the consideration shown on the invoice. Similar adjustments are provided for if the accountable person issues a credit note showing an inadequate amount of tax. **(1)**

Note that interest and penalties may also arise – see *Part 14*.

If an unregistered person issues an invoice showing tax as a separate item, he or she makes himself/herself liable to pay to Revenue the tax thus shown. **(2)**

Note that such persons also make themselves liable to penalties under *section 115*.

If a person, other than a flat-rate farmer, issues a flat-rate invoice, he or she is liable for the amount of the flat-rate addition and, for the purposes of payment of the amount, is an accountable person. **(3)**

If a flat-rate farmer issues an invoice for a fictitious transaction or for an inflated amount of flat-rate addition for a genuine transaction, he/she is liable for the amount of the flat-rate addition or the relevant amount thereof, as the case may be, for the purposes of payment of that amount, is an accountable person. **(4)**

Where a flat-rate farmer is obliged to issue a credit note under *section 68(2)(b)* and fails to do so within the time allowed by regulations, or issues a credit note for a lesser amount of flat-rate addition than is correct, he/she is liable for the amount that should have been stated on the credit note or the amount of flat-rate addition understated, as the case may be, and is an accountable person for the purposes of payment. **(5)**

Note that interest and penalties may also arise – see *Part 14*.

70. Time limits for issuing invoices, etc.

Summary

This section deals with the time limits that are in place for issuing invoices and amended invoices. The general rule is that the document must be issued by the 15th of the month following the supply. This is set out in regulations. The section also provides that the time limits for the issue of invoices in relation to early payments are set by regulations.

Details

Subsection (1) provides for the making of regulations fixing the time within which invoices, credit notes and amended invoices must be issued. (Regulation 23 of the VAT Regulations 2010 refers.) The standard period is 15 days from the end of the month in which the supply took place. **(1)**

Subsection (2) requires the issue of an invoice if payments are received before the supply of the goods or services in question. This subsection also applies to flat-rate farmers. Regulation 23 of the VAT Regulations 2010 sets out the time limits for the issue of the invoice. This rule does not cover intra-Community acquisitions specified in paragraphs 1(1) or (2) of Schedule 2. **(2)**

71. Self-billing and outsourcing

Summary

This section sets out the self-billing and outsourcing arrangements for invoicing. The general rule is that that where a person supplies goods and services to an accountable person, the registered customer may issue the invoice provided certain conditions are met. Outsourcing, under which invoices may be issued by a person who acts in the name and on behalf of the supplier, is also catered for in the section.

Details

Where a person supplies goods and services to an accountable person, the registered customer may issue the invoice provided certain conditions are met. These conditions are that: **(1)**

- there is prior agreement between the supplier and the customer that the customer may draw up and issue the invoice, **(1)(a)**

- the customer is a person registered for VAT, **(1)(b)**

- any conditions which are imposed by the VAT Act or by regulations on the supplier in relation to the form, content or issue of the invoice are met by the customer, and **(1)(c)**

- agreed procedures are in place for the acceptance by the supplier of the validity of the invoice. **(1)(d)**

An invoice is deemed to have been issued by the supplier in accordance with *subsection (1)* only when it is accepted by the supplier in accordance with the agreed procedures mentioned in the subsection. **(2)**

Outsourcing is dealt with in *subsection (3)*, which provides that an invoice required to be issued by a supplier under the Chapter is deemed to be so issued by that supplier if— **(3)**

- It is issued by a person who acts in the name and on behalf of the supplier, and **(3)(a)**

- Any conditions that are imposed by the VAT Act or by regulations on the supplier in relation to the form, content or issue of the invoice are met. **(3)(b)**

Subsection (4) provides that any credit note or debit note issued in accordance with the Chapter that amends and refers specifically and unambiguously to an invoice is treated as if it were an invoice for self-billing /outsourcing purposes. In other words, credit notes, etc. can be outsourced or self-billed too. **(4)**

Revenue may make regulations in relation to the conditions applying to invoices covered by the section. (See Regulation 21 of the VAT Regulations 2010.) **(5)**

72. Storage of invoices

This section provides that invoices must be stored and kept as part of the records of a taxable person as required by *section 84*. It also provides that records that are not stored electronically in accordance with Revenue requirements (see Regulation 21 of the VAT Regulations 2010 and section 887 of the Taxes Consolidation Act 1997) must be stored within the State. However, subject to any conditions that may be set by Revenue, the records may be stored outside the State.

73. Requests for particulars in respect of repayment of tax

Summary

This section obliges an accountable person, or a flat-rate farmer, who is so requested to provide details of tax chargeable on goods or services supplied to a person entitled to repayment of VAT. The details must be provided within 30 days of receipt of the request.

Details

An accountable person must give details on the amount of tax chargeable on goods and services supplied to a person entitled to repayment of the VAT, if he or she is requested in writing to do so. This applies when the requester is claiming entitlement to refund under: **(1)**

(a) *section 103* (Ministerial refund order),

(b) *section 57, 58, 102 or 104(4) or (5)* (goods exported, retail export scheme, refunds for taxable persons outside EU, for supplies on boats/aircraft leaving Ireland, for commercial fishing)

(c) *section 104(3)* (radios for the blind).

A flat rate farmer who is requested in writing by a person claiming entitlement to the flat rate addition must also supply the information required. **(2)**

A request for particulars must be met within 30 days. **(3)**

Chapter 3 - Returns and payments of tax – main rules

74. Tax due on supplies

Summary

This section sets out various rules for the time when VAT becomes due, or when a liability for VAT arises, in respect of supplies of goods and services. The general rules are that the VAT is due when the supplies of goods and services are made, or when an invoice should be issued in the case of supplies to VAT-registered persons. The section also contains rules for utility bills, for deposits or advance payments, and for adjustments for cancelled deposits that are retained.

Details

The date upon which tax becomes due in respect of supplies of goods and services is fixed in *subsection (1)* as follows: **(1)**

- In relation to a transaction between taxable persons, the tax becomes due on the date of issue of the invoice or, if the invoice has not been issued at the proper time, on the date on which it should have been issued. (See *Chapter 2 of this Part* in regard to the date on which an invoice is required to be issued). **(1)(a)**

- Paragraph (b) deals with the liability which arises through the issue of an incorrect invoice or credit note by a taxable person, or the issue of an invoice showing tax by an unregistered person – see *section 69(1) and (2)*. In any of these circumstances the tax falls due on the date of issue of the invoice or credit note in question. **(1)(b)**

- In the case of continuous supplies of utilities (i.e. gas, electricity and telecommunications) to non-business and other unregistered customers, the tax is due when the utility company issues the bill to the customer, provided that it issues a bill at least once every three months. If a bill is not issued at least once every three months, the rule at *paragraph (d)* applies. The VAT rate is the rate in force at the date the bill issues to the consumer. **(1)(c)**

Paragraph (d) provides that in any of the circumstances not dealt with in *paragraphs (a), (b) or (c)* the tax becomes due on the date of the supply. **(1)(d)**

Early payments are covered in *subsection (2)*. This situation arises where payment is received in respect of a supply of goods or services before the supply is completed. Advance payment for supplies in the State are treated in the same way as actual physical supplies of goods. In other words, the goods for which the advance payment is being made are regarded as having been supplied, to the extent that they have been paid for, and the normal rules of accountability apply. **(2)**

An advance payment in respect of an intra-Community acquisition of goods <u>is not</u> regarded as a supply. This is because the corresponding intra-Community supply in the other Member State cannot arise until the goods have been physically dispatched or transported from that other Member State. Similarly, an advance payment received relating to an intra-Community supply, or to the supply of a new means of transport to a person in another Member State, is not regarded as a supply and does not give rise to a charge to tax. The latter event only arises when the goods are physically dispatched or transported to that other Member State.

Subsection (3) provides that where tax is due on the invoice basis under *subsection (1)(a) or (b)* or on utility bills under *subsection (1)(c),* then an accountable person who is not on the cash receipts basis (see *section 80*) and who receives advance payments must account for tax by reference to the date of issue of the corresponding invoice, rather than the date of receipt of payment (i.e. the advance payment rule at *subsection (2)* doesn't apply.) **(3)**

A special VAT rule applies if a deposit is retained by the supplier in the event of a cancellation by the customer – as there was no supply, the supply can reduce his/her VAT liability by the VAT originally accounted for on the deposit amount. **(4)**

Payment of a deposit is a prepayment for the supply of the goods or services to which it relates, and a supply of goods or services is deemed to have taken place to the extent of the prepayment. Where such supplies are taxable, tax is chargeable on the deposit in accordance with *subsection (2)*. This subsection provides that the supplier can reduce his or her VAT liability by the amount of VAT paid in connection with a deposit in circumstances where the consumer subsequently cancels the transaction relating to the deposit and the supplier retains that deposit, provided the following conditions are met:

(a) that the supply does not take place because the customer has cancelled it,

(b) the cancellation is recorded as such in the books and records of the supplier,

(c) the deposit is not refunded to the customer, and

(d) no other consideration, benefit or supply is provided to the customer by any person in lieu of that amount.

Where these conditions are fulfilled the supplier may reduce the amount of his or her VAT liability for the period in which the deposit is forfeit by the amount of VAT already accounted for on the deposit. Where the supplier retains the deposit in these circumstances, he/she must issue a credit note to the customer. If the customer was an accountable person and was entitled to a credit for VAT charged on the deposit, then he/she must adjust his or her VAT liability.

75. Tax due on intra-Community acquisitions

This section sets out the rules for the time when tax is due on intra-Community acquisitions (ICAs). It provides that tax becomes due on the ICA of goods on the 15th of the month following that during which the acquisition is made. This is the basic rule.

However, where the supplier in the other Member State issues an invoice for the goods in advance of that date, the tax becomes due on the date of issue of that invoice. (If the supplier's invoice is in another currency, the exchange rate applicable on the day the tax is due is used – see *section 37(4)* for details.)

It may be noted that separate timing rules apply in the case of ICAs of new transport (cars, boats and planes – see *section 2(1)* for definitions) or of excisable goods by non-registered persons. These are covered in *section 79*. Also see Table 9.1 at the end of this Part.

Note also that a deferred payment scheme operates for VAT due on imports. This allows for the VAT to be paid on the 15th of the month following the month in which it becomes due. Importers or agents must be authorised to use the scheme, which operates by direct debit.

76. Returns and remittances

Summary

This section sets out the general rules on when VAT becomes payable to the Collector-General. It provides that every accountable person must submit a return and pay any tax due by the 19th of the month following the end of each 2-monthly taxable period (January/February, March/April, etc. – see definition of taxable period in *section 2(1)*). The return is submitted on a prescribed form (the "VAT 3") and shows VAT due on sales and VAT deductible on purchases.

The section also provides that persons such as liquidators and receivers who dispose of an accountable person's assets must send in a return and payment by the 19th of the following month; in this case the accountable person does not include the details on his/her own tax return. Delegated authority for making tax returns is also provided for.

Details

The tax that falls due during any taxable period becomes payable to Revenue between the 10th and 19th of the following month. **(1)**

The taxpayer is required to lodge a VAT return in connection with such payment. The VAT return sets out the tax due (box T1 on the VAT return) and the tax deductible (box T2 on the VAT return.).

Note, in the case of supplies to which the special schemes for telecommunications, broadcasting and e-services are applied the tax becomes payable on or before the 20th day of the month following the relevant calendar quarter –*sections 91C(3) and (4) and 91E(3) and (4)* refer.

Subsection (2) deals with the liability of liquidators and receivers. Effectively, the liquidators or receivers of an accountable person's business must account for VAT on the disposal of the business assets and on the services supplied in the course of carrying on, or winding up the business. **(2)**

– A person such as a liquidator or receiver who disposes of goods forming part of the assets of an accountable person or who, in the course of carrying on the business or winding up the business of the accountable person, supplies taxable services (including lettings) deemed to be supplied by the accountable person, must furnish a return at the end of each two-month taxable period and pay the total amount of tax due in relation to; **(2)(a)**

(a) those supplies,

(b) an adjustment required under the capital goods scheme (see *section* 64), and

(c) an adjustment required under the transitional rules for immovable goods (see *section* 95(*4*)).

This must be done between the 10th and the 19th of the following month. The tax must be paid at the same time.

– The liquidator, receiver, etc. must send to the accountable person such details as may be specified by regulations. **(2)(b)**

– The tax due is treated as a necessary disbursement out of the proceeds of the disposal or the income from the services supplied. **(2)(c)**

Subsection (3) provides that the accountable person is entitled to exclude from any VAT return required to be made by him/her the tax on supplies of goods or services for which the liquidator, receiver etc. is required, under *subsection (2),* to account. **(3)**

Subsection (4) deals with delegated authority for making returns. **(4)**

– *Paragraph (a)* facilitates the making of a VAT return or an adjustment to a VAT return by a person acting under the authority of an accountable person. **(4)(a)**

– *Paragraph (b)* provides that where a VAT return is furnished by a person acting under an accountable person's authority, the provisions of any enactment relating to VAT will apply as if the return was furnished by the accountable person. **(4)(b)**

77. Authorisations in relation to filing dates

Summary

The purpose of this section is to allow for VAT returns less frequent than the normal bi-monthly system. It provides for a variation on the normal requirement so that, at the discretion of the Collector-General, certain traders (in practice, mainly small-scale traders) may be permitted to make returns and payments at less frequent intervals than normal (not exceeding twelve months).

In practice, accountable persons with an annual liability of €3,000 or less may be authorised to submit a return for a six-monthly period and, where the liability is between €3,001 and €14,400, accountable persons may submit a quarterly return.

When a return is lodged in respect of an accounting period and in accordance with the conditions applicable, the trader is deemed to have complied with the general requirement in regard to each of the two-monthly taxable periods that make up his/her accounting period.

Details

Subsection (1) defines 'accounting period' and limits it to a period not exceeding 12 months. **(1)**

The subsection also allows annual remitters and taxpayers under the direct debit scheme who submit one VAT return per year to align the date of their annual VAT return with the date of their own commercial accounting year. The term 'authorised person' is also defined as an accountable person authorised under the section.

Subsection (2) applies notwithstanding the normal rules: **(2)**

- *Paragraph (a)* empowers the Collector-General to make authorisations unless the accountable persons object, in which case they will remain on the normal two-monthly system of returns and remittances. **(2)(a)**

- *Paragraph (b)* provides that an authorised person may furnish a return and remittance covering a period consisting of a number of taxable periods (maximum 6). **(2)(b)**

- *Paragraph (c)* provides that, in the case of a person authorised to account for VAT by monthly direct debit, the amount of such remittance is the balance of tax remaining after deducting the direct debit payments made by him/her. **(2)(c)**

- *Paragraph (d)* provides that the concept that liability to tax and deduction of input tax relates to each taxable period comprised in the accounting period is maintained. The maintenance of that concept is necessary having regard, in particular, to the Revenue preferential status in bankruptcy and liquidation – see Taxes Consolidation Act 1997 sections 960O and 960P, which refer to a liability to VAT for the taxable periods which ended in the 12 months immediately prior to the date of bankruptcy or winding-up. **(2)(d)**

Subsection (3) gives details of certain matters that the Collector-General may take into account when issuing an authorisation. These are set out in *paragraphs (a) and (b).* **(3)**

- *Paragraph (a)* establishes that there will be no threat to revenue and that the accountable person concerned will meet his/her obligations in relation to the authorisation. **(3)(a)**

- *Paragraph (b)* provides that the accountable person must be registered for VAT for at least one year prior to the year in which the authorisation has effect and that he/she must have made all his/her returns in respect of the preceding taxable periods. **(3)(b)**

An authorisation can be issued with or without conditions. **(4)**

- *Paragraph (a)* enables the Collector-General, taking into account the matters outlined in *subsection (3)*, to issue an authorisation subject to any conditions which he/she deems fit, and to set out those conditions in writing. **(4)(a)**

- *Paragraph (b)* establishes that, without prejudice to any conditions which might be laid down by reference to *paragraph (a)*, the Collector-General may require an authorised person to make payments on account between the 10th and 19th day from the end of each taxable period in his/her accounting period, except for the last taxable period. **(4)(b)**

An authorised person may be required to agree to a schedule of amounts with the Collector-General to be paid through direct debit. The amounts specified on the schedule should amount to the person's best estimate of the annual liability. If the total of the direct debit payments are not, or are not likely to be, sufficient to cover the person's annual liability, the person should agree a revised schedule with the Collector-General and adjust the direct debit amounts accordingly. **(5)**

Under the direct debit system, any balance of tax remaining is submitted with the end of year VAT3 return. Note that where insufficient amounts are paid by direct debit which result in the balance of tax payable with the return amounting to 20% or more of the trader's annual VAT liability, the trader is liable to an interest charge back to mid-point of the year – see *section 114(3).*

The Collector-General has power to terminate, by notice in writing, an authorisation. The Collector-General is obliged to terminate an authorisation where requested to do so. **(6)**

Subsection (7) gives details of certain matters that the Collector-General may take into account when terminating an authorisation. These are set out in *paragraphs (a) and (b)*. **(7)**

- *Paragraph (a)* establishes that the Collector-General may terminate an authorisation where he/she is no longer satisfied regarding security of the tax. **(7)(a)**
- *Paragraph (b)(i)* provides that the Collector-General may terminate an authorisation where the accountable person concerned supplied, or there was supplied on his/her behalf, false information in order to receive an authorisation. **(7)(b)(i)**
- *Paragraph (b)(ii)* provides that the Collector-General may terminate an authorisation where the accountable person fails to submit his/her return and remittance in time or does not comply with any conditions laid down by the Collector-General in relation to the authorisation. **(7)(b)(ii)**

Where an authorisation is terminated, the authorised person has 14 days in which to submit a return in respect of outstanding accounting periods or part thereof. **(8)**

An authorisation is deemed to be terminated where the authorised person— **(9)(a)**

(i) ceases to trade,

(ii) being a body corporate, goes into liquidation, or

(iii) is no longer an accountable person, e.g. continues to trade but supplies made are exempt from VAT, or is no longer registered for VAT, i.e. his/her turnover falls below the limit above which registration is compulsory and he/she opts to deregister, or he/she is no longer able to carry on business due to bankruptcy or death.

Where an authorisation is withdrawn, the accountable person will, in relation to any taxable period for which no return or payment has been made, comply with the terms of *section 76* as if the authorisation had not been issued. **(9)(b)**

Paragraph (c) allows for a personal representative of the authorised person to be treated as the accountable person concerned for the purposes of this subsection. **(9)(c)**

77A. Adjustments to returns

Summary

This section deals with adjustments to VAT returns.

Details

Subsection (1) provides that following the furnishing of a VAT return, enactments relating to VAT apply to any subsequent adjustment to that return. **(1)**

Subsection (2) provides that an adjustment is, where applicable, deemed to be a claim for a refund of tax and is subject to the general provisions on refunds of tax as set out in *section 99*. **(2)**

78. Electronic remittances and returns

This section deals with VAT remittances and returns that are made electronically. Essentially, the section provides that persons who submit electronic remittances and returns are given 4 days more than persons who submit paper remittances and returns. This means the tax falls due on the 23^{rd}, as opposed to the 19^{th}, of the following month. However, if the electronic remittance or return is submitted late, the extra 4 days grace is forfeited and the due date for the tax reverts to the 19^{th} of the month.

79. Special provisions in relation to payment dates

Summary

This section sets out special rules on payment dates that apply notwithstanding the general rules on payments in *section 76* (returns and remittances) and *section 77* (authorisations).

The section covers payment dates for intra-Community acquisitions (ICAs) of new means of transport or of excisable products by persons with no entitlement to VAT deductibility. It also provides that non-EU based traders supplying digitised products to Irish private customers under the special scheme for electronic services must pay the VAT with their quarterly return under that scheme. In addition, it provides that taxable persons who supply telecommunications services, broadcasting services and electronically supplied services under the non-Union scheme (*section 91C*) or under the Union scheme (*section 91E*) to non-taxable persons within the State must pay the VAT with their quarterly return under those schemes.

Details

Subsection (1) contains definitions for the purposes of the section. **(1)**

Subsection (2) provides for special rules for the payment of the VAT liability on the ICA of new motor vehicles by persons not entitled to deductibility on them. The VAT is payable: **(2)**

- at the same time as the Vehicle Registration Tax (VRT), or
- when the vehicle is being registered if no VRT is payable, or
- when it becomes due in accordance with *section 75* (tax due on intra-Community acquisitions) if the vehicle does not have to be registered for VRT.

The person making the ICA may be required to complete a Revenue form. **(2)(b)**

The VRT provisions on collection/recovery also apply to the VAT. **(2)(c)**

The payment of VAT on ICAs of new boats and aircraft acquired by private individuals and accountable persons not entitled to VAT deductibility is determined by regulations. The tax is payable to Revenue within 3 days of the due date – see Regulation 28 of the VAT Regulations 2010. **(3)(a)**

The customs duty provisions on collection/recovery also apply to the VAT. **(3)(b)**

Subsection (4) deals with the payment of VAT on the intra-Community acquisition of excisable products by an unregistered person – see *section 11(2).* The intra-Community acquisition of excisable products is always taxable in the country of destination. This subsection provides that, where a person is not liable to tax except in relation to the acquisition, the VAT liability should be paid with the excise duty. **(4)(a)**

The excise provisions on collection/recovery also apply to the VAT. **(4)(b)**

Tax under the special scheme for electronically supplied services (*section 91*) is payable when the quarterly VAT return is required to be submitted under that section. Tax under the non-Union scheme (where the State is Member State of consumption) *section 91C* and under the Union scheme (where the State is Member State of consumption) *section 91E* is payable on or before the 20th day of the month following the end of the relevant calendar quarter. **(5)**

Chapter 4 –Moneys received basis

80. Tax due on moneys received basis

Summary

This section provides that a person may be authorised to determine his or her tax liability by reference to moneys received. The moneys received basis of accounting allows accountable persons to account for VAT when they actually receive payment from their customers instead of when the invoice issues.

VAT-registered persons may opt to account on the basis of moneys received ("cash receipts") when their annual turnover does not exceed €2million, or when most (90% or more) of their sales are to persons – like private consumers – who can't claim VAT deductibility. Normal obligations in relation to keeping records, issuing invoices, and so on – as outlined elsewhere in this Part – still apply to persons on the moneys received basis. However, persons on the moneys received basis of accounting are not allowed to use the rule in *section 67(5)* that allows the parties to agree to leave the tax unaltered on the invoice when the consideration changes.

Moneys received does not just cover cash – see definition of the term in *section 2(2).*

Details

Persons entitled to the cash receipts basis are traders— **(1)**

(a) whose turnover is made up of not less than 90% of supplies to unregistered persons, or

(b) whose turnover in a twelve-month period does not exceed €2,000,000 (with effect from 1 May 2014).

Typically, retail outlets, pubs, restaurants, etc. are covered under (a). Traders must apply in writing to their local Revenue District for the necessary authorisation to use the cash basis and must provide the particulars referred to at paragraph (3) of Regulation 25 of the VAT Regulations 2010 together with their turnover details.

Subsection (2) deals with certain scenarios in relation to the moneys received basis, from the point of view of determining tax due and payable. **(2)**

- *Paragraph (a)* covers the situation where the VAT rate changes between the time goods and services are supplied and payment is received by the trader - in such circumstances the trader is liable at the rate of tax applicable at the time of supply. **(2)(a)**

- *Paragraph (b)* covers the situation where a trader changes from the invoice basis to the moneys received basis of accounting. He/she is not obliged to account on any payments received after the changeover where the payments relate to invoices issued prior to the changeover. In other words, tax isn't due again when the money comes in. **(2)(b)**

- *Paragraph (c)* covers the situation where a supply is made at a time when the supply is not liable to VAT but payment is received after the supplies have been brought into the VAT net. In such circumstances no liability arises on the payment received. This could occur where a supplier exceeds the threshold and becomes an accountable person or a particular activity changes from being exempt to being taxable. **(2)(c)**

The Minister may make an order to increase the turnover threshold of €2million specified in *subsection (1)(b)* above. *Subsection (3)* lays down the usual rules for the making of such an order. **(3)**

Revenue has power by regulation to cancel any authorisation issued under *subsection (1)* and to exclude from the cash receipts basis of accounting tax due in respect of certain supplies of goods or services. Regulation 25 of the VAT Regulations 2010 excludes tax chargeable in respect of — **(4)**

- transactions between connected parties (the question of whether parties are connected is dealt with in paragraph (5)(b) of that Regulation),

- a supply of goods under a hire purchase agreement,

- a supply of construction services by a subcontractor to a principal contractor, where the principal is liable for the tax on a reverse charge basis, and

- a supply of goods where consideration does not consist wholly of money – see examples in *Part 6*.

Where the supplier does not issue the relevant credit note in accordance with *section 67(1)(b)*, in respect of a discount granted to a customer, then the tax that is attributable to the discount is due at the time the credit note should have issued. This effectively means that the cash receipts basis does not apply to the amount of the discount on that particular transaction. **(5)**

For example: Goods are supplied from business X (trader) to business Y (customer), X is on the cash receipts basis. A discount is given, and X issues a credit note. This means that the customer's VAT deduction is reduced. There is no effect on X's VAT liability, because he/she accounts on the basis of cash receipts.

However, if there is no credit note, there is no change in Y's liability – the subsection provides that the cash receipts basis does not apply to the amount it should have issued for. This ensures that the correct amount of VAT is accounted for.

Tax on imports and the intra-Community acquisition of goods are excluded from the application of this section. **(6)**

Chapter 5 – Expressions of doubt

81. Letter of expression of doubt

Summary

This section allows a person who is in doubt about the application of VAT law to a transaction to lodge a letter of expression of doubt with Revenue. If the expression of doubt is accepted by Revenue as genuine, interest will not apply to any tax payable on the resolution of the matter in doubt.

Details

Subsection (1) sets out the provisions for the purposes of the section: **(1)**

- Where a non-registered person is in doubt as to whether he or she is an accountable person, that person can avail of the expression of doubt mechanism.
- A letter of expression of doubt must be clearly identified as such and must:
    - set out full details of the circumstances of the transaction,
    - make reference to the provisions of the law giving rise to the doubt,
    - identify the amount of tax or deductibility in doubt in respect of the taxable period to which the expression of doubt relates, and
    - be accompanied by any relevant supporting documentation.

An accountable person who is in doubt about the application of VAT to a transaction may lodge the expression of doubt with his or her local Revenue District at the same time as the return is due. **(2)(a)**

The section only applies if the return is furnished on time to the Collector-General. **(2)(b)**

An expression of doubt must be lodged by a person who is concerned as to whether or not he or she is an accountable person not later than the 19th of the month following the taxable period in which the transaction giving rise to the doubt occurred. **(3)**

In the case of a genuine expression of doubt being accepted by Revenue, interest will not be payable in respect of any additional liability arising as a result of Revenue's examination of the matter in doubt, if payment of the additional amount is made on time, as if it were tax due for the taxable period in which the notification is issued by Revenue of its determination of the matter in doubt. **(4)**

Subsection (5) provides the circumstances in which Revenue will not accept an expression of doubt as genuine. In particular, these are where Revenue: **(5)**

- has issued general guidelines about the application of the law in similar circumstances,

- is of the opinion that the matter is otherwise sufficiently free from doubt as not to warrant an expression of doubt, or

- is of the opinion that the accountable person was acting with a view to the evasion or avoidance of tax.

Revenue will notify the accountable person if an expression of doubt is not accepted as genuine. The case is then treated as if no expression of doubt has been lodged and interest charges apply in the normal way. **(6)**

Subsection (7) allows for an appeal mechanism where an accountable person is aggrieved by a decision of Revenue that the expression of doubt is not genuine. The appeal may be lodged in accordance with section 949I of the Taxes Consolidation Act 1997 within the period of 30 days after the date of notice of that decision. **(7)**

An expression of doubt is deemed not to be made unless it is acknowledged by Revenue and that acknowledgement is kept as part of the accountable person's records. **(8)**

Chapter 6 - Recapitulative statements

82. Statement of intra-Community supplies of goods

Summary

This section requires registered traders to supply to Revenue a periodic statement of their zero-rated supplies of goods to VAT registered persons in other Member States. The information is stored in a data bank, which is accessible electronically by the tax authorities in the other Member States. Similarly, Revenue has access to data stored in the data banks in other EU countries.

The purpose of these arrangements, which are known as the VAT Information Exchange System (VIES), is to ensure that details supplied by traders in respect of their intra-Community trade can be checked and monitored by the tax authorities. The system allows checks to be made that goods which have been zero-rated in one Member State, on the basis of a claim that they have been sold and delivered to a registered trader in another Member State, are actually accounted for in the Member State to which it is claimed that they have been delivered.

For zero-rating to apply to a supply of goods to a person in another Member State:

- The customer must be registered for VAT in that Member State,
- That registration number, and the supplier's registration number, must be on the invoice, and
- The goods must be dispatched or transported to the other Member State.

VIES returns for supplies of goods must, as a general rule, be made by traders on a monthly basis, although traders with less than €50,000 supplies of goods per quarter may opt to file quarterly VIES returns.

Details

Subsection (1) defines 'intra-Community supplies of goods' as supplies of goods to a person registered for VAT in another Member State. It also defines the threshold, which allows traders to file quarterly, instead of monthly, returns. This is €50,000. **(1)**

VAT-registered traders who make zero-rated supplies to VAT registered persons in other Member States are required to make a VIES statement to Revenue of those supplies. **(2)**

Returns in respect of supplies made in a calendar month must be submitted by the 23rd of the following month. **(3)(a)**

However, the monthly return rule does not apply to traders covered by *subsection (4)* (annual returns) or *subsection (5)* (quarterly returns). **(3)(b)**

Revenue may authorise the furnishing of the VIES statement on an annual basis (by 23 January of the following year) where traders do not make intra-Community supplies of services (see *section 83*) and where supplies are below threshold amounts set out in regulations. **(4)**

Where supplies for a calendar quarter or the 4 previous quarters are below €50,000 (as defined in *subsection (1)*), the return can be submitted by the 23rd of the following month. **(5)**

However, if the value hits the €50,000 threshold in any single month, then the return must be submitted by the 23rd of the next month – in other words, the default rule in *subsection (3)* kicks in.

Subsection (6) provides for nil returns. It obliges a trader who normally submits a VIES statement to Revenue to do so even where he/she makes no intra-Community supplies of goods in a particular period. This is to ensure continuity and certainty of information. **(6)**

83. Statement of intra-Community supplies of taxable services

<u>Summary</u>

This section requires registered traders to supply to Revenue a periodic statement of their supplies of taxable services to VAT registered persons in other Member States. These additional filing arrangements for services were introduced in January 2010 and match existing rules for goods. This is part of the VAT package on new place of supply rules and new arrangements for intra-Community refunds of VAT.

The basic rule provides that suppliers of business to business taxable services across Community borders must file a quarterly VIES return. A supplier may opt to provide this return monthly. As in the case of goods, the purpose of these arrangements is to facilitate checking and monitoring by the tax authorities.

Details

Subsection (1) defines ‘intra-Community supplies of services’ as supplies of services to a taxable person in another Member State or any other person registered for VAT in another Member State. **(1)**

VAT-registered traders who make supplies of services to VAT-registered persons in other Member States are required to make a VIES statement to Revenue of those supplies. This applies where the customer is liable to pay the VAT. **(2)**

The general rule is that returns must be lodged quarterly, by the 23rd of the month following the calendar quarter. **(3)**

However, traders have the option of lodging monthly returns. In this case, the returns are submitted by the 23rd of the following month. **(4)**

Subsection (5) deals with long-term continuous supplies of services where no payments are made in a calendar year – these are deemed to be completed at the end of each calendar year for returns purposes. **(5)**

Subsection (6) provides for nil returns and matches the provision for goods. It obliges a trader who normally submits a VIES services statement to Revenue to do so even where he/she makes no intra-Community supplies of taxable services in a particular period. This is to ensure continuity and certainty of information. **(6)**

Chapter 7 - Record keeping

84. Duty to keep records

Summary

This section provides that every accountable person who supplies goods or services in the course or furtherance of business must keep and preserve certain records in connection with their activities. Records must normally be retained for 6 years from the date of the latest transaction to which they relate.

Details

Subsection (1) provides that accountable persons must keep full records of all their business transactions that affect or may affect their liability to tax and entitlement to deductibility. The details to be kept are set out in Regulation 27 of the VAT Regulations 2010. **(1)**

Unregistered business persons – for example small traders who have not elected to register – must keep the invoices issued to them in connection with their business purchases. **(2)**

The records that a trader is required to keep include linking documents and must normally be preserved by him/her for 6 years. This is designed to provide sufficient time to enable the trader's returns to be checked against his/her books by Revenue officials. **(3)**

Records required to be kept under the special schemes for supplies of telecommunications, broadcasting and e-services must be retained for 10 years from the end of the year in which the supply was made – *sections 91B(14), 91C(7), 91D(14) and 91E(7)* refer.

Subsection (4) also deals with time limits for records, and extends the period for certain property transactions. It provides that a person who develops property or acquires a taxable interest in developed property must retain records relating to those transactions for such time as they hold a taxable interest in the property plus a further period of 6 years. **(4)(a)**

Also, if a person opted to waive their right to exemption from tax in respect of a short term letting of a property under the old property rules (see *section 96*), then, the records relating to the acquisition or development of that property must be held for the duration of the waiver plus a further period of 6 years. **(4)(b)**

Where a transaction is the subject of an inquiry, investigation, claim, appeal or legal proceedings which extends beyond the 6-year retention period, the records relating to that transaction, and to any return impacted by that transaction, must be retained until the inquiry, investigation, claim, appeal or legal proceedings has been finally determined. **(4)(c)**

This provision will only apply where an inquiry, investigation, claim, appeal or legal proceedings have commenced within the normal 6-year retention period and that inquiry, investigation, claim, appeal or legal proceedings or any further appeals or legal proceedings have not been determined within that period.

The 6-year time limit does not apply in cases where Revenue has notified the person that he/she does not need to keep the records. **(5)**

Linking documents are defined as documents drawn up in the making of accounts and returns showing the calculations linking records to those accounts and returns. **(6)**

85. Supplementary provisions on records

Summary

This section deals with supplementary provisions in relation to records kept for particular purposes. It covers records relating to property, qualifying conferences and investment gold.

Details

Subsection (1) provides for the keeping of records in relation to exercising and terminating a landlord's option to tax, a capital good record, a joint option for taxation and a document relating to assignments and surrenders under *section 95(9)(a)*. **(1)**

Subsection (2) deals with record keeping in connection with qualifying conferences. **(2)**

– *Paragraph (a)* requires that an accountable person who claims deductibility in respect of qualifying accommodation must retain full and true records, including details issued to that person by the conference organiser, in relation to attendance by that person, or his or her representative, at a qualifying conference. (In practice, the organiser of such conferences would routinely provide these documents as part of a delegate's conference pack.) **(2)(a)**

– *Paragraph (b)* requires the organiser of the qualifying conference to retain in his/her possession details of each such conference. **(2)(b)**

Subsection (3) provides that persons who trade in investment gold must keep full records of all their transactions in investment gold. The details to be kept are set out in Regulation 30 of the VAT Regulations 2010. **(3)**

Table 9.1: Summary of times when VAT is due

Type of supply	**When is VAT due?**	**Provision**
General rules for goods and services	When the goods and services are supplied	*Section 74*
	When the invoice is issued	*Section 74*
	When the utility bill is issued for continuous supplies	*Section 74*
Intra-Community acquisitions	15^{th} of the following month, or when the invoice is issued, if earlier	*Section 75*
	New cars, by persons who can't deduct the VAT – usually with the VRT; by 15^{th} of the following month if there is no VRT	*Section 79*
	New boats, planes, by persons who can't deduct – 3 days of arrival (set out in regulations)	*Section 79*
	Excisable goods, by persons who can't deduct – when the excise is payable	*Section 79*
Imports	Point of entry /leave duty suspension arrangements	*Sections 53, 92*

PART 10 – SPECIAL SCHEMES

Overview

This Part, which contains 14 sections, sets out the provisions relating to a number of special schemes that are provided for in the VAT Act. This includes the special provisions for tax invoiced by flat-rate farmers (*section 86*). An enabling provision restricting this scheme in certain circumstances is provided for in *section 86A*.

It also includes 3 margin schemes i.e. the margin schemes for taxable dealers (*section 87*), travel agents (*section 88*) and auctioneers (*section 89*). Under the margin schemes, suppliers pay VAT on their profit margin in certain circumstances.

In addition, Part 10 has sections on the investment gold waiver of exemption scheme (*section 90*), on the special scheme for business to consumer e-services supplied from outside the EU (*section 91*) and on special schemes for telecommunications services, broadcasting services and electronically supplied services (*Chapter 2 – sections 91A to 91F*).

Finally, the scheme under which VAT at importation is not payable in respect of alcohol products that are placed under a duty suspension regime (such as an excise warehouse), and that are supplied under that regime, is also covered in *Part 10* (*section 92*).

Chapter 1 – Special Schemes - Miscellaneous

86. Special provisions for tax invoiced by flat-rate farmers

This section provides that a flat-rate farmer must issue an invoice in respect of sales of produce or services showing separately the net consideration and the flat-rate addition – currently 5.4%. The result is that an accountable person in receipt of the invoice is entitled to a deduction under *Chapter 1 of Part 8* in respect of the flat-rate addition. The rules for farmer invoices are outlined in *section 68*. While the flat-rate addition is shown separately on the invoice, it is part of the price and is deductible for VAT.

A flat rate farmer is defined in *section 2(1).* Flat rate farmers do not register for VAT. They are compensated for the VAT they are charged on their purchases by means of the flat-rate addition, which they add on to the price at which they sell their agricultural goods and services to VAT-registered persons (for example, marts, agricultural co-ops and meat factories).

Note that farmers may be obliged to register in respect of intra-Community acquisitions, services received from abroad and certain other supplies – see *Part 2*.

Subsection (1) provides that a flat-rate farmer must issue an invoice in respect of sales of produce or services. This must show separately the net consideration and the flat-rate addition. This is currently 5.4%. **(1)**

Subsection (1A) provides that the issue of an invoice by a flat-rate farmer can only apply in respect of agricultural produce or an agricultural service of a kind not specified in an order made under *section 86A*. **(1A)**

Subsection (2) allows for the adjustment of contract prices and provides for the recovery of the flat-rate addition. This gives farmers the same rights as accountable persons under *section 45* in relation to adjustment and recovery. **(2)**

It should, however, be noted that a flat-rate farmer is not entitled to payment of the flat-rate addition in respect of the supply of agricultural produce or an agricultural service which is the subject of an order made under *section 86A*.

86A. Restriction of flat-rate addition

Summary

This section gives the Minister for Finance power to make an order to exclude particular agricultural produce or agricultural services, as specified in that order, from the flat-rate addition scheme.

Details

Subsection (1) provides the Minister with the power to make an order to exclude particular agricultural produce or agricultural services, as specified in that order, from the flat-rate addition scheme. The Minister could make such an order where he is satisfied that the flat-rate addition payments within the sector systematically exceed the VAT that would be recoverable by those in the sector if the flat-rate scheme did not apply. **(1)**

Subsection (2) defines 'non-recoverable tax on input costs' for the purposes of subsection (1). This means tax which would be deductible in accordance with *section* *59* if the flat-rate farmers in the particular agricultural sector were registered for value-added tax, less tax which is recoverable by flat-rate farmers in that sector in accordance with a refund order made under *section* *103*. **(2)**

Subsection (3) provides that a Ministerial order made under this section must be passed by Dáil Éireann within 21 days of the order being laid before the Dáil. **(3)**

87. Margin scheme – taxable dealers

Summary

This section provides the legal basis for the margin system whereby dealers in certain second-hand goods, works of art, antiques and collectors' items pay VAT only on their profit margin. Since 1 January 2010, second-hand means of transport and agricultural machinery are also part of the margin scheme, having been moved from the special schemes that applied to these supplies prior to that date.

The rate of VAT applicable to a supply under the margin scheme depends on what type of goods are involved. The general rule is that the rate applicable to a normal supply is the rate applicable to a margin scheme supply, but there are some exceptions to this. This scheme is optional - dealers in these goods can, if they wish, apply the normal VAT rules to any supply.

Details

Subsection (1) contains the definitions for the section. It prescribes the goods which qualify for the margin scheme, and who can use it. In general, the scheme applies to second-hand goods bought in for resale by dealers from specific sources. These sources are, basically, persons who paid VAT (or are deemed to have paid VAT) on their initial purchase of the goods without deductibility for that VAT. Typically, these would be private individuals or exempt bodies. The disposal by an insurance company of repossessed goods is also included. **(1)**

The other items covered by the margin scheme are specified works of art, collectors' items and antiques. Second-hand means of transport and agricultural machinery, which had their own special schemes up to end-2009, are also included in the definition of "second-hand goods". Precious metals and precious stones are excluded from the margin scheme. Scrap metal is also excluded from the margin scheme.

To participate in the scheme a dealer must be registered for VAT and be in the business of buying and selling the goods in question, either on his/her own behalf or on an agency basis for others. The effect of this definition is to exclude an accountable person who is in a different line of business but who happens to dispose of some second-hand goods as an incidental part of his/her business. The definition of taxable dealer also includes a finance company that purchases margin scheme goods for onward supply as part of a hire purchase agreement financed by the company.

The central concept in this section is the definition of "profit margin". The profit margin is the difference between the selling price and the purchase price of a good. It is deemed to be tax-inclusive. If the purchase price is greater than the selling price, the profit margin is nil and there is no liability to VAT. There is also no entitlement to a credit or repayment in the event of a loss (but see *subsection (8)*).

S*ubsection (2)* makes provision for an option to apply the margin scheme. A dealer could, depending on the circumstances of a sale, decide that it is more appropriate to apply the normal VAT rules. One of the features of the margin scheme is that the customer is not entitled to recover the VAT included by the dealer in the selling price. So, if the customer is a VAT-registered person it may be in the interests of both the dealer and the customer to apply the normal rules. **(2)**

Subsection (2A) provides that the margin scheme cannot be applied to the intra-Community supply of a new means of transport. In such circumstances the normal rules apply. **(2A)**

The taxable amount in a margin scheme transaction is the profit margin of the dealer less the VAT included in that margin. **(3)**

Example:

Dealer buys second-hand furniture for €150 and sells it for €180. The profit margin is €30 inclusive of VAT at 23%. The VAT liability is €5.60 i.e. (€30/123) x 23. The taxable amount is €30 - €5.60 = €24.40.

A dealer is permitted, under *subsection (4)*, to apply the margin scheme to all his/her transactions in: **(4)**

- works of art, collectors' items or antiques which he/she has imported,
- works of art supplied to him/her by the creator or the creator's successors in title, or
- works of art supplied to him/her by an accountable person other than a dealer, where the supply of such works of art was liable to VAT at the 13.5% rate by virtue of *section 48(1)(c)*.

This option applies even when the goods would not normally be eligible, because of their source, for the margin scheme.

If a dealer opts to apply this extended scheme, he/she must opt in for a period of at least 2 years, subject to the opt-out possibility provided by *subsection (7)* below. **(4)(b)**

Subsection (5) provides that where a taxable dealer opts to apply *subsection (4)*, the purchase price for the purposes of calculating the profit margin in the case of imports (i.e. goods from outside the EU) is the value for customs purposes plus VAT at import – see *section 53*. **(5)**

Subsection (6) provides that if the dealer opts into the extended scheme under *subsection (4)*, he/she cannot claim a credit for the VAT suffered on the purchase or importation of the goods (but see *subsection (7)*). **(6)**

The input credit is not claimable because the dealer will be accounting for VAT only on his/her profit margin on the resale.

Subsection (7) provides that a dealer operating the extended scheme may apply the normal VAT rules to any of the *subsection (4)(a)* transactions. In such case the dealer cannot claim a credit for any VAT paid by him/her on purchase or import until the taxable period in which the dealer is accounting for his/her sale. **(7)**

This is because he/she will not know until the point of sale whether he/she is accounting for this transaction under the normal scheme or under the margin scheme. In this way, all stock-on-hand is treated in the same way as regards deductibility until the point of sale.

Subsection (8) provides for simplified arrangements for the taxation of low value goods that qualify for the margin scheme. These are goods for which the keeping of detailed individual records of profit margins would be excessively onerous. **(8)**

These arrangements apply where each item is resold for less than €635. The simplified arrangements provide that the dealer accounts for VAT on his/her aggregate profit margin. The aggregate margin is the difference between the value of his/her sales and purchases of all low value margin scheme goods for the taxable period.

– *Paragraph (a)* defines aggregate margin and low value margin scheme goods for the purposes of the subsection. Where, in calculating the aggregate margin, the value of the purchases exceeds the value of the sales, the subsection provides that the negative margin does not give rise to a repayment nor should it be set off against any other liability for that period. Instead, it is carried forward and added to the purchases of low value margin scheme goods in calculating the aggregate margin for the next taxable period. **(8)(a)**

– *Paragraph (b)* gives the formula for calculating the amount of tax in the aggregate margin. (The aggregate margin itself is tax inclusive). A separate aggregate margin must be calculated at each tax rate. **(8)(b)**

– *Paragraph (c)* provides that where a low value margin scheme good is subsequently sold for more than €635 it no longer qualifies for the simplified arrangements. Instead, the sale must be dealt with under the margin scheme. This means that the purchase price of that good should be deducted from the total purchases of low value margin scheme goods for the period in which the sale takes place. The subsection does not lay down the actual method of calculating the purchase figure. The purchase price may be based on the average mark-up achieved in the business or other appropriate measures. **(8)(c)**

Example:

	€
Period 1	
Sales	3,000
Purchases	(2,000)
Margin	1,000 including VAT
VAT payable	1,000/123 x 23 = 186.99
Period 2	
Sales	2,000
Purchases	(3,000)
Margin	(1,000)
VAT payable	nil – negative margin
Period 3	
Sales	3,000
Purchases	(1,500)
Negative margin for period 2	(1,000)
Margin	500 including VAT
VAT payable	500/123 x 23 = 93.50

This example assumes that all goods sold qualify for the simplified arrangements and all are liable at the 23% standard VAT rate.

If the dealer has sales of low value margin scheme goods at more than one rate, a separate aggregate margin must be calculated for each rate. Where a negative amount arises in calculating the aggregate margin at any tax rate, that amount should be carried forward and used in calculating the aggregate margin at that rate for the next period.

Where a dealer applies the margin scheme to a transaction, he/she must not indicate the VAT separately on the invoice. This rule ensures that the customer cannot reclaim any VAT relating to the transaction under the margin scheme. It also means that the customer is not aware of the dealer's profit margin. **(9)**

Where a dealer sells an item under the margin scheme to a VAT-registered customer in another Member State, Irish VAT still applies to the transaction. It is not zero-rated as an intra-Community supply, which would be the rule in the case of a normal supply. **(10)**

The dealer could opt to apply the normal scheme and zero-rate the supply, but, of course, he/she cannot take a VAT credit in respect of the purchase of the goods because he/she will not have a VAT invoice from his/her supplier – see *subsection (1)* above.

Subsection (11) is a technical provision arising out of the rule in *subsection (10)*, deeming the Member State of dispatch to be the legal place of supply in an intra-Community margin scheme transaction. **(11)**

Subsection (12) is a technical provision dealing with commission sales where a taxable dealer acts on behalf of a principal. It establishes that the time of supply by the principal to the dealer is the same as the time of supply by the dealer to the customer. **(12)**

Subsection (13) caters for the future taxation of goods sold by a dealer under the margin scheme to an accountable person. If the accountable person subsequently disposes of such goods in the course or furtherance of business, this provision ensures that the supply by the accountable person is not exempt and is treated like any other taxable disposal. In other words, *paragraph 12 of Schedule 1* does not apply. However, the subsequent supply continues to be exempt if: **(13)**

- the goods are motor vehicles for which no deductibility was allowed, or
- the goods are used solely in the course of an exempted activity.

Subsection (14), which applies from 3 April 2010, deals with motor vehicles used by taxable dealers for business purposes – for example, as demo models. **(14)**

- *Paragraph (a)* provides that when the taxable dealer registers the vehicle in his/her name, a self-supply occurs and the dealer accounts for the VAT on that self-supply: **(14)(a)**

  (i) the vehicle is treated as if it is removed from stock,

  (ii) there is a deemed self-supply, and

  (iii) the VAT chargeable under *paragraph (b)* is not deductible.

- *Paragraph (b)* provides that where the dealer subsequently sells the vehicle, the margin scheme may apply and the provision sets out how the profit margin is to be calculated: **(14)(b)**

  (i) the vehicle is deemed to be reacquired under the margin scheme,

  (ii) for calculating the profit margin, the purchase price is the sum of the amount on which VAT was charged plus the VAT plus the VRT.

88. Margin scheme – travel agents

Summary

This section transposes the EU VAT Directive provisions concerning the travel agent's margin scheme into Irish law. The travel agent's margin scheme applies from 1 January 2010 to tour operators and travel agents, acting as principals, whose supplies consist of services such as transport, accommodation, etc., which they have bought in from third parties for onward supply to travellers.

The supply of such services as a travel package is treated as a single supply. The taxable amount is the profit margin realised by the travel agent on the supply of the travel package. The rate applicable to the margin scheme services is the standard rate where the holiday is within the EU, and the zero rate where the holiday is outside the EU. Under the scheme, there is no entitlement to deduct input VAT incurred on the bought-in services, but VAT incurred on overheads is deductible, subject to the normal rules.

Details

Subsection (1) contains definitions of the key elements of the scheme. **(1)**

The term 'bought-in services' refers to goods or services purchased by a travel agent from another business for the direct benefit of a traveller. In general, this covers services used by the traveller during the journey – for example, transport and accommodation.

The term 'margin scheme services' means bought-in services supplied by a travel agent to a traveller. The scheme does not apply to supplies made by one travel agent to another, for onward supply to the traveller. It does not include services provided by the travel agent to the traveller from the travel agent's own resources.

A 'travel agent' is a taxable person who acts as a principal in the supply to a traveller of margin scheme services. For the purposes of the margin scheme, tour operators are also considered to be travel agents. *Note that the term does not cover travel agents who act in a capacity as commission agents.*

The term 'travel agent's margin' refers to the amount on which the travel agent is liable to VAT. In simplest terms, it is calculated by subtracting the total cost of bought-in services from the total consideration for the margin scheme supply. There is no liability (margin) if the costs exceed the sales figure.

The 'travel agent's margin scheme' is the special arrangements for the taxation of margin scheme services.

Under *subsection (2)*, all the margin scheme services – for example, accommodation, transport, tour guide services – supplied by a travel agent to a traveller in respect of a journey are treated for VAT purposes as a single supply. **(2)**

The place of supply of margin scheme services is where the travel agent has established his or her business. **(3)**

However, if the travel agent supplies the services to the traveller from a fixed establishment elsewhere (such as another Member State), then the place of supply of those services is the place where the fixed establishment is located.

The travel agent's margin scheme is a mandatory scheme for supplies of margin scheme services supplied in the State. **(4)**

The profit margin (exclusive of tax) is the amount on which tax is chargeable. **(5)**

A travel agent may not deduct input VAT, or get a refund of tax, in respect of bought-in services that are supplied on to the traveller as margin scheme services. **(6)**

Subsection (7) provides for the apportionment of the consideration payable by the traveller where a supply for a single consideration covers both margin scheme services and other goods or services. Only that portion which covers the margin scheme services is to be taxed under the margin scheme. The balance is taxed according to the normal rules. **(7)**

Subsection (8) provides that the travel agent's services are treated as intermediary services (for the purpose of zero-rating them) if the bought-in services (such as hotel services) are availed of by the traveller outside the Community. **(8)**

Subsection (9) deals with the apportionment of the travel agent's margin for a travel package that includes travel services both inside and outside the Community. **(9)**

The travel agent must account for VAT due on margin scheme services in the normal VAT return. **(10)**

The Revenue Commissioners may make regulations on the operation of the scheme in general and for simplified accounting arrangements in particular. **(11)**

89. Margin scheme – auctioneers

Summary

This section gives effect to the auction scheme as set out in the VAT Directive. The principles governing the auction scheme are very similar to those for the margin scheme in *section 87*. Briefly, the section provides that where certain works of art, collectors' items, antiques or tangible movable second-hand goods are sold by an auctioneer at a public auction, while acting on behalf of a principal, the auctioneer is liable to VAT only on his/her profit margin.

The rate of VAT applicable to a supply under the auction scheme is the same as that applicable under the margin scheme (see *section 87*).

Details

Subsection (1) defines the scope of the section in relation to persons and goods covered by the section. The subsection also defines the auctioneer's profit margin, which is the amount on which the tax is calculated. **(1)**

"Auction scheme goods" are works of art, collectors' items, antiques and tangible movable second-hand goods, which are sold by public auction. The auction scheme applies where the principal is a private individual, an exempt person or a taxable dealer who applied the margin scheme (as set out in *section 87*) to his/her supply of the goods. An insurance company which took possession of goods from an insured person in connection with the settlement of a claim is also a principal for the purposes of the auction scheme.

"Auctioneer's margin" is the difference between what an auctioneer receives from a purchaser and what he/she pays to the principal. It is tax-inclusive.

An auctioneer must apply the auction scheme to any supply by him/her, by way of public auction, of auction scheme goods as defined. **(2)**

The taxable amount (under *subsection (3)*) is the auctioneer's margin less the amount of VAT included in that margin. **(3)**

Subsection (4) requires the auctioneer to issue to the purchaser and the principal written details of the transaction. *(Note: The detailed requirements have not been set down in legislation – the normal commercial documents issued by the auctioneer in respect of the auction, subject to subsection (5), are sufficient.)* **(4)**

Subsection (5) provides that an auctioneer cannot, in relation to a supply under this section, show, on the invoice issued by him/her, the amount of VAT for which he/she is accountable. **(5)**

Subsection (6) is a technical provision simplifying the procedures for issuing an invoice. If the principal is required under the normal VAT rules to issue an invoice (because he/she is an accountable person), the invoice issued by the auctioneer will fulfil this requirement. **(6)**

Where an auctioneer supplies auction scheme goods to a VAT-registered person in another Member State, the supply cannot be zero-rated and Irish VAT should be charged on the supply, as if it was a sale within the State. **(7)**

(Note that auction scheme goods supplied to a customer outside the European Community qualify as exports liable at the zero rate).

Subsection (8) is a technical provision arising out of the rule in *subsection (7)* deeming the Member State of dispatch to be the legal place of supply in an intra-Community auction scheme transaction. **(8)**

Subsection (9) provides that the supply of auction scheme goods to an auctioneer is regarded as taking place at the time when the auctioneer sells the goods to a purchaser at a public auction. **(9)**

Subsection (10) caters for the future taxation of items sold by an auctioneer under the auction scheme to an accountable person. If the accountable person subsequently disposes of such an item in the course or furtherance of business, this provision ensures that the supply by the accountable person is not exempt in accordance with *paragraph 12 of Schedule 1* and is treated like any other taxable supply. **(10)**

However, the subsequent supply continues to be exempt if the goods are:

– motor vehicles for which no deductibility was allowed, or

– goods used solely in the course of an exempted activity.

90. Investment gold

Summary

This section implements EU Council Directive 98/80/EC (now Articles 344 to 356 of the VAT Directive) dealing with a special scheme for the VAT treatment of investment gold. Provisions in *Schedule 1* to the VAT Act also apply.

Essentially, this special scheme:

– exempts transactions in investment gold from VAT (see *paragraph 9 of Schedule 1*), thus treating them the same as financial services for VAT purposes, and

– ensures that Community producers and transformers of investment gold are not discriminated against compared to third country producers and transformers by providing a series of options for the waiver of the exemption so as to avoid the incidence of trapped VAT.

Details

The terms ‘intermediary’ and ‘investment gold’ are defined under the special scheme. **(1)**

All investment gold, whether in physical form or represented by paper transactions (securities and the like), is covered by the provisions of the special scheme **(2)**

A person who produces investment gold or transforms gold into investment gold is given the right to waive his or her exemption from tax in respect of a supply of investment gold to a taxable person. This allows the supplier to claim input tax incurred in relation to that supply **(3)**

Agents are allowed to waive their own exemption rights in respect of their intermediary services when taking part in transactions where the supplier of the gold has availed of the option to tax under *subsection (3).* **(4)**

The right to waive exemption recognises the dual use to which investment gold can be put. While investment gold is usually traded for investment purposes, it can also be used for industrial production (e.g. jewellery manufacturing). For this reason, an option to tax specific transactions in investment gold is necessary to provide the mechanism to prevent trapped VAT. For example, if investment gold is sold for industrial purposes, the person making the supply can waive his or her exemption and can claim input credit in respect of that transaction. The purchaser who is going to use this gold as an input in his or her industrial activity will be able to claim the VAT charged on the gold in accordance with the normal deductibility rules.

The detailed conditions under which waiver rights may be exercised are contained in Regulation 33 of the VAT Regulations 2010 and cover such issues as how to verify that the supply is genuinely a business to business transaction.

Subsection (5) covers liability to tax when the option to waive the right to exemption has been exercised. **(5)**

- *Paragraph (a)* establishes a reverse charge, making the purchaser of the investment gold an accountable person and liable to pay the tax on a supply by a person who has waived his/her right to exemption. It also relieves the supplier of his/her liability.

- *Paragraph (b)* allows the person who is made liable for tax under *paragraph (a)* to deduct the tax, if his or her subsequent supply of the investment gold is exempt. The deduction can be taken in the taxable period when the liability arises, so there is no cash-flow disadvantage to the taxpayer.

Subsection (6) establishes the right to deduct tax charged on supplies, intra-Community acquisitions and imports of non-investment gold when the gold is transformed into investment gold and subsequently supplied exempt of tax. **(6)**

- *Paragraph (a)* covers deductions by accountable persons. The deduction is allowed as part of the accountable person's normal VAT return.

- *Paragraph (b)* gives persons a right to claim a refund on the tax charged. Details of the conditions and procedures for this refund are contained in Regulation 34 of the VAT Regulations 2010.

Subsection (7) covers the right to deduct tax charged on services which modify gold that is subsequently supplied exempt of tax. **(7)**

- *Paragraph (a)* provides deductibility for these services when supplied to accountable persons. The deduction is allowed as part of the accountable person's normal VAT return.

- *Paragraph (b)* allows persons to claim the tax on these services by way of refund, in accordance with conditions set down in Regulation 34 of the VAT Regulations 2010.

Subsection (8) establishes the right to deduct tax charged on inputs consisting of associated goods or services that are used to produce investment gold, or transform gold into investment gold, which is subsequently supplied exempt of tax. **(8)**

- *Paragraph (a)* allows an accountable person to deduct tax charged on the supply of associated goods or services in the normal way through the VAT return.

- *Paragraph (b)* allows persons to claim the tax by way of refund, in accordance with conditions set down in Regulation 34 of the VAT Regulations 2010.

Subsection (9) provides for the verification of the identity of buyers of investment gold of a value in excess of €15,000. It also provides for the retention of relevant records kept under *section 85(3)*. **(9)**

91. Electronic services scheme

Summary

This section reflects the provisions of Articles 359 to 369 of the VAT Directive, which provide for an optional special scheme for the VAT treatment of electronic services supplied by non-EU business to private consumers in the EU, where such businesses are not established in the EU. The special scheme was introduced to reduce the compliance burden and administrative costs for suppliers. The scheme enables the non-EU supplier to choose one EU country in which to register and pay VAT, regardless of the Member State in which the consumer resides. Once registered, the supplier must make returns, declaring the VAT due on all the on-line sales to consumers within the EU.

A special return form is provided under which the supplier must provide a breakdown of all electronic supplies to customers in each Member State. Payment is made to a designated account in the Member State of registration. That Member State must re-distribute these VAT receipts to Member States in accordance with the amounts due as declared by the supplier. The rate of VAT is the standard rate in the country where the consumer resides and quarterly returns are provided for.

Note that the place of supply of electronic services which are supplied by a non-EU supplier to a private consumer in the EU is the place where the private consumer normally resides. Where a non-EU business supplier does not opt to use the special scheme, it is obliged to register and account for VAT in every EU Member States where it has private customers.

Note that this section does not apply to supplies of electronic services made on or after 1 January 2015. *From that date the provisions of Chapter 2 (special schemes for telecommunications services, broadcasting services and electronically supplied services) can be applied by suppliers of such services.*

Details

Subsection (1) is a definitions section. **(1)**

Subsection (2) is the enabling provision, which allows traders to use the scheme. **(2)**

Revenue is allowed to set up an identification register of non-EU suppliers who opt to register in this country under the scheme. Registration is accessible only through the ROS system. **(3)**

The information that must be furnished to Revenue by the non-EU suppliers in order to get on the register is set out in *subsection (4)*. This is done electronically. **(4)**

Revenue registers the applicants and provides them with an identification number on receipt of the information. **(5)**

The suppliers on the Irish register must submit special VAT returns and pay Revenue the VAT due in respect of their supplies in <u>all</u> Member States, including Ireland, within 20 days of the end of each calendar quarter. Payment must be made in euro to a bank account designated by the Accountant General's Office. A nil return must be submitted where the person does not make any supplies in the quarter. **(6)**

Subsection (7) itemises the details that must be included on the special VAT return. **(7)**

In the case of these electronic supplies the conversion rate will be the rate as published by the European Central Bank for the last date of the calendar quarter, or if there is no publication on that date, the rate on the next day of publication – note that this is different to the normal conversion rules in *section 37(4)*. **(8)**

A person from outside the EU who makes supplies in Ireland under the scheme is not entitled to deduct input VAT using the VAT return, but is entitled to claim a refund from Revenue under the 13^{th} VAT Directive. **(9)**

A supplier can discharge his or her tax liabilities in relation to registration, record keeping and payments by paying Irish VAT in another Member State under this scheme. This ensures that a double set of VAT obligations on the supplier is not created. **(10)**

The normal compliance rules, the interest provisions and other common provisions of the VAT Act apply to suppliers into Ireland under the special scheme. **(11)**

Subsection (12) covers obligations in relation to record keeping under the scheme. It obliges a person who becomes taxable under the special scheme to keep full and true records for a period of 10 years. It also provides that all such records must be made available on request to Revenue and other Member States of consumption. **(12)**

Subsections (13) and (14) provide for rules governing the operation of the register.

Suppliers are obliged to tell Revenue if their circumstances change, etc. **(13)**

Revenue can exclude a supplier from the register if the person does not comply with the rules, ceases to supply the e-services, etc. **(14)**

Subsection (15) allows Revenue to make regulations if necessary, to give effect to the scheme. **(15)**

Subsection (16) disapplies the electronic services scheme under this section in relation to supplies made on or after 1 January 2015 when the special schemes for telecommunications services, broadcasting services and electronically supplied services in *Chapter 2* take effect. **(16)**

Chapter 2 – Special Schemes for Telecommunications Services, Broadcasting Services and Electronically Supplied Services

91A. Definitions

This section defines various terms, which are applicable to the special schemes for telecommunications services, broadcasting services and electronically supplied services, for the purposes of this *Chapter*. Some of the definitions are self-explanatory, the following may be noted:

– broadcasting services are both radio and television broadcasting services.

– Member State of consumption means the MS in which the supply of scheme services takes place (i.e. where the consumer is established, has a permanent address or usually resides - Article 58 of the VAT Directive. Council Implementing Regulation (EU) 1042/2013 provides legal presumptions for customer location).

– Member State of identification, for the non-Union scheme means the MS in which the taxable person applies to be identified for that scheme and, for the Union scheme means the MS in which the taxable person has established his or her business or the MS in which he or she has a fixed establishment.

– non-Union scheme means the scheme for telecommunications services, broadcasting services or electronically supplied services supplied by a taxable person whose business is not established in the EU and has no fixed establishment in the EU.

– scheme services means telecommunications services, broadcasting services or electronically supplied services supplied to non-taxable persons.

– Union scheme means the scheme for telecommunications services, broadcasting services or electronically supplied services supplied by a taxable person whose business is established in the EU or who has a fixed establishment in the EU but whose business is not established in, and who has no fixed establishment in, the MS of consumption.

91B. Non-Union scheme (where the State is Member State of identification)

<u>Summary</u>

This section deals with the non-Union scheme and the rules applicable to taxable persons who choose to register in the State for the purposes of that scheme.

<u>Details</u>

Subsection (1) is an enabling provision, which allows traders to use the non-Union scheme. **(1)**

Subsection (2) requires Revenue to set up an identification register of non-EU suppliers who opt to register in this country under the non-Union scheme. **(2)**

Subsection (3) sets out the information that must be furnished to Revenue, by a person who opts to be identified in the State for the non-Union scheme, in order to register. Registration is accessible only through the Revenue Online System (ROS) system. **(3)**

Subsection (4) allows Revenue, on receipt of the information, to register an applicant and provide that person with an identification number. **(4)**

Subsection (5) provides that any changes in the information provided under *subsection (3)* must be notified to Revenue by electronic means. **(5)**

Subsection (6) deals with cessation of registration. **(6)**

Subsection (7) provides that a supplier on the Irish register must submit a special scheme VAT return and pay Revenue the amount due in respect of their supplies in all Member States, including Ireland, within 20 days of the end of each calendar quarter. Payment must be made in euro to a bank account designated by Revenue. A nil return must be submitted where the person does not make any supplies in the quarter. **(7)**

Subsection (8) itemises the details that must be included on the special scheme VAT return. **(8)**

Subsection (9) provides that the conversion rate to be applied when completing the VAT return under the provisions of the non-Union scheme will be the rate as published by the European Central Bank for the last date of the calendar quarter, or if there is no publication on that date, the rate on the next day of publication. **(9)**

Subsection (10) provides that an identified person is not entitled to deduct input VAT using the special scheme VAT return. **(10)**

Subsection (11) provides that an identified person may make corrections to the special scheme VAT return by electronic means within 3 years from the date the return was due to be submitted. **(11)**

Subsection (12) allows Revenue to issue a reminder where the return has not been submitted on the 10th day following the due date for submission. **(12)**

Subsection (13) allows Revenue to issue a reminder where a return has been submitted but no payment or only partial payment has been made on the 10^{th} day following the due date for payment. **(13)**

Subsection (14) covers obligations in relation to record keeping under the non-Union scheme. It obliges an identified person to keep full and true records for a period of 10 years. It also provides that all such records must be made available on request to Revenue and other Member States of consumption. **(14)**

91C. Non-Union scheme (where the State is Member State of consumption)

Summary

This section deals with the non-Union scheme as it applies to taxable persons who supply telecommunications, broadcasting or electronically supplied services to non-taxable persons within the State and who are therefore accountable persons in the State.

Details

Subsection (1) clarifies that a person who makes taxable supplies in the State and who opts to use the non-Union scheme (whether in the State or another Member State) is an accountable person for the purposes of the VAT Consolidation Act 2010. **(1)**

Subsections (2), (3) and (4) provide that a person who applies the non-Union scheme (whether in the State or another Member State) and who files a return and pays the tax due in the State, in accordance with the provisions of that scheme, will be regarded as having fulfilled his or her obligations in relation to registration, returns and payments under the VAT Consolidation Act 2010. The returns and payments made under the provisions of the scheme will be regarded as if they were returns and payments which were required to be made under the normal return and payments provisions of that Act. **(2)(3)(4)**

Subsection (5) provides that the the conversion rate to be applied when completing the VAT return under the provisions of the non-Union scheme will be the rate as published by the European Central Bank for the last date of the calendar quarter, or if there is no publication on that date, the rate on the next day of publication – note that this is different to the normal conversion rules in *section 37(4)*. **(5)**

Subsection (6) provides that a taxable person using the non-Union scheme is not entitled to deduct input VAT using the special scheme VAT return but is entitled to claim a refund from Revenue under the 13th VAT Directive. **(6)**

Subsection (7) covers obligations in relation to record keeping under the non-Union scheme. It obliges an identified person to keep full and true records for a period of 10 years from the end of the year in which the transaction was carried out. **(7)**

91D. Union scheme (where the State is Member State of identification)

Summary

This section deals with the Union scheme and the rules applicable to a taxable person who chooses to register in the State for the purposes of that scheme.

Details

Subsection (1) is an enabling provision, which allows traders to use the Union scheme. **(1)**

Subsection (2) requires Revenue to set up an identification register of non-EU suppliers who opt to register in this country under the Union scheme. **(2)**

Subsection (3) sets out the information that must be furnished to Revenue, by a person who opts to be identified in the State for the Union scheme, for the purposes of registration. Registration is accessible only through the Revenue Online System (ROS) system. **(3)**

Subsection (4) allows Revenue, on receipt of the information, to register an applicant. **(4)**

Subsection (5) provides that any changes in the information provided under *subsection (3)* must be notified to Revenue by electronic means. **(5)**

Subsection (6) deals with cessation of registration. **(6)**

Subsection (7) provides that a supplier on the Irish register must submit a special scheme VAT return and pay to Revenue the amount due in respect of their supplies of scheme services in other Member States within 20 days of the end of each calendar quarter. Payment must be made in euro to a bank account designated by Revenue. A nil return must be submitted where the person does not make any supplies in the quarter. **(7)**

(8)

Subsection (8) itemises the details that must be included on the special scheme VAT return.

Subsection (9) provides that the conversion rate to be applied when completing the VAT return under the provisions of the Union scheme will be the rate as published by the European Central Bank for the last date of the calendar quarter, or if there is no publication on that date, the rate on the next day of publication. **(9)**

Subsection (10) provides that an identified person is not entitled to deduct input VAT using the special scheme VAT return. **(10)**

Subsection (11) provides that an identified person may make corrections to the special scheme VAT return by electronic means within 3 years from the date the return was due to be submitted. **(11)**

Subsection (12) allows Revenue to issue a reminder where the return has not been submitted on the 10th day following the due date for submission. **(12)**

Subsection (13) allows Revenue to issue a reminder where a return has been submitted but no payment or only partial payment has been made on the 10th day following the due date for payment. **(13)**

Subsection (14) covers obligations in relation to record keeping under the Union scheme. It obliges an identified person to keep full and true records for a period of 10 years. It also provides that all such records must be made available on request to Revenue and to Member States of consumption. **(14)**

91E. Union scheme (where the State is Member State of consumption)

Summary

This section deals with the Union scheme as it applies to taxable persons who are registered for the purposes of the Union scheme in another Member State but who are accountable persons in respect of their supplies of telecommunications, broadcasting or electronically supplied services to non-taxable persons within the State.

Details

Subsection (1) clarifies that a person who makes taxable supplies in the State and who opts to use the Union scheme in another Member State is an accountable person for the purposes of the VAT Consolidation Act 2010. **(1)**

Subsections (2), (3) and (4) provide that a person who applies the Union scheme in another Member State and who, in accordance with the provisions of the scheme in that other Member State, files a return and pays the tax due in the State, will be regarded as having fulfilled his or her obligations in relation to registration, returns and payments under the VAT Consolidation Act 2010. The returns and payments made under the provisions of the scheme will be regarded as if they were returns and payments which were required to be made under the normal return and payments provisions of the Act. **(2)(3)(4)**

Subsection (5) provides that the the conversion rate to be applied when completing the VAT return under the provisions of the Union scheme will be the rate as published by the European Central Bank for the last date of the calendar quarter, or if there is no publication on that date, the rate on the next day of publication – note that this is different to the normal conversion rules in *section 37(4)*. **(5)**

Subsection (6) provides that a taxable person using the Union scheme is not entitled to deduct input VAT using the special scheme VAT return but is entitled to claim a refund from Revenue under *section 101* or in accordance with Chapter 3 of Part 9 if appropriate. **(6)**

Subsection (7) covers obligations in relation to record keeping under the Union scheme. It obliges an identified person to keep full and true records for a period of 10 years from the end of the year in which the transaction took place. **(7)**

91F. Regulations: special schemes for telecommunications services, broadcasting services and electronically supplied services

This section provides for the making of regulations as necessary for the purposes of giving effect to the non-Union scheme or the Union scheme, as the case may be.

Chapter 3 – Suspension arrangements for alcohol products

92. Suspension arrangements for alcohol products

Summary

This section deals with the taxation of alcohol products held under an excise duty suspension arrangement, primarily a bonded warehouse. The main purpose of the legislation is to ensure that where a liability to VAT arises on alcohol products held under a suspension arrangement, VAT on the long price (that is, the duty-inclusive price) of the goods will be paid at the time of the removal of the goods from the suspension arrangement.

Details

Subsection (1) contains necessary definitions for the purpose of the section. The products covered by these rules are spirits, wine, beer, cider and perry, other fermented beverages and intermediate beverages. ("Suspension" means that excise duty is suspended.) **(1)**

The last supply is the only taxable one. *Subsection (2)* covers the situation where the alcohol products are the subject of a supply while they are held under a suspension arrangement (e.g. within warehouse). Where such a supply takes place it will form the basis of liability to VAT (payable when the goods are being removed from the suspension arrangement) and any previous intra-Community acquisition or importation is disregarded. If there is more than one supply, only the last supply in the State will form the basis of liability. **(2)**

Subsection (3) deals with the date when VAT is payable in the case of a supply referred to in *subsection (2)*. The default rule is that liability will arise at the same time as the excise duty becomes due. However, where the goods leave the State as a result of such supply (i.e. an intra-Community supply, an export, or a sale in a duty-free outlet) and no excise duty is due, the normal VAT payment dates apply. **(3)**

Subsection (4) deals with the date when VAT is payable in the case where alcohol products have been the subject of an intra-Community acquisition (ICA), other than cases where the ICA is by a person not entitled to deductibility – see *section 11(2).* The same rule applies as in the case of an internal supply under *subsection (2)* - the tax is due at the same time as the duty of excise becomes due. **(4)**

Subsection (5) deals with the date when VAT is payable in the case where alcohol products have been the subject of an importation from outside the EU. Again, the same rule applies as in the case of an internal supply under *subsection (2)* - the tax is due at the same time as the duty of excise becomes due. **(5)**

The taxable amount includes excise duty payable. *Subsection (6)* ensures that in all cases the value on which the VAT is assessed includes the excise duty chargeable on the goods. **(6)**

Subsection (7) provides that excise duty payment rules apply to the VAT payments. Where VAT is payable in accordance with the terms of the section, the tax is payable at the same time as the excise duty is payable, and the tax is treated as if it were a duty of excise – that is, paid to Revenue in the same way as the excise duty is paid. **(7)**

PART 11 – IMMOVABLE GOODS

Overview

This Part contains 6 sections covering VAT rules for immovable goods. A new VAT regime for taxing property transactions was introduced in the Finance Act 2008 and applies from 1 July 2008. Under the new system,

- The first supply of newly developed property is taxable for 5 years from completion. The second and subsequent supply is taxable for 2 years following occupation.

- There is an option to tax the supply of property, where the supply would otherwise be exempt.

- The letting of property is exempt from VAT, but there is an option available to landlords to tax the rents in certain circumstances – either where the parties are not connected or where the lessee can deduct over 90% of the VAT charged if the parties are connected. The option does not apply to residential property.

- There is a capital goods scheme in operation, which relates VAT deductible to the use of property over its VAT life. (See *Chapter 2 of Part 8* for details.)

- Transitional rules apply for properties that have been developed under the old VAT on property system. There are also transitional rules for properties that were let prior to 1 July 2008 where a landlord had a waiver of exemption in place – broadly, they continue to be taxed under the old rules, with a clawback if the waiver is cancelled.

93. Supply of immovable goods (old rules)

Summary

This section sets out the special provisions that apply in relation to reversionary interests and post letting expenses in respect of properties supplied under the rules in place prior to 1 July 2008.

Details

An "interest" in immovable goods is defined as an estate or interest that was created for a minimum period of 10 years or, if it was created for less than 10 years, gives an option to the lessee to extend the lease to 10 years or more. **(1)(a)**

The definition also provides that a person is regarded as disposing of an interest if he/she creates a lesser interest (as defined in section 4(2A) of the 1972 VAT Act) out of his/her own interest and transfers that lesser interest to another.

Where the interest contains one or more options for the person to extend it, the interest is deemed to be for the full period, including the options. **(1)(b)**

The immovable goods to which the section applies are goods which meet either of the following conditions: **(1)(c)**

- they have been developed by or on behalf of a person making the supply, or
- the person making the supply was entitled to a deduction under *Chapter 1 of Part 8* for the tax that was or should have been invoiced to him/her in respect of the supply or development of the goods.

The reversionary interest provisions under *subsection (2)* are restricted to cases where that reversionary interest was created prior to 1 July 2008. **(2)(a)**

Where a leasehold interest in property is subject to VAT, subsequent supplies of that property by the landlord are generally not subject to VAT unless the property is redeveloped. Only development, which is carried out by, on behalf of, or to the benefit of, the landlord, triggers a VAT charge on the supply by that landlord.

There is provision for the making of regulations to specify the circumstances or conditions under which development work is not treated as being on behalf of, or to the benefit of, the landlord. *No regulations have been made on this matter.* **(2)(b)**

The post letting expenses provisions under *subsection (3)* are restricted to interests disposed of prior to 1 July 2008. **(3)**

Deductibility of VAT on post-letting expenses incurred by the landlord, whether he or she created the lease, when those expenses are directly related to the taxable lease is provided for. VAT on post-letting expenses is deductible if—

– the landlord is obliged to perform the services under the terms of the contract and the value of that obligation is reflected in the capitalised value of the lease for VAT purposes,

– the landlord incurs costs that directly relate to the operation of the lease, such as expenses incurred in collecting the rent, carrying out a rent review or the exercise of an option to extend the lease or exercise a break clause.

VAT on post-letting expenses that are not reflected in the terms of the lease or are not reflected in the value of the lease is not deductible.

94. Supplies of immovable goods (new rules)

<u>Summary</u>

This section contains rules on how property transactions that take place on or after 1 July 2008 are treated for VAT purposes. In particular, it provides for the exemption of certain supplies of immovable goods and a joint option for taxation of those exempt supplies. Where the joint option is exercised, the purchaser accounts for VAT on the sale on a reverse charge basis.

The supply of houses and apartments for residential purposes (whether by the sale of the freehold or by way of a very long lease (a "freehold equivalent interest") is taxable. The first sale of houses and apartments by property developers and builders is taxable under the post-1 July 2008 rules.

The supply of commercial buildings – whether by the sale of the freehold or the freehold equivalent interest – is taxable only while the building is considered "new". For this purpose, a building is regarded as "new" for a period of up to 5 years following completion. The first supply of a building within 5 years after completion is always taxable. Subsequent supplies within 5 years after completion are also taxable except where the building has been occupied for two years or more at the time of supply. An existing building that is substantially refurbished or is adapted for materially altered purposes is considered "new" following such work, and sales of those buildings are subject to the rules for sales of new buildings.

Land that is sold in connection with a contract to develop it is taxable; the VAT treatment of undeveloped land (e.g. farm land) was not affected by the new rules that apply from 1 July 2008.

Details

The terms "completed" and "occupied" are defined for the purposes of the section. "Development" is defined in *section 2(1)*. These are all key concepts, as taxation or exemption of a supply of property is determined essentially on the basis of whether the property is developed, the time the development was completed and the length of time the property has been occupied. **(1)**

- A property is "developed" when a new building is constructed, or when an existing building is reconstructed, etc. Adapting a building to materially alter its use (for example, to change it from a warehouse to an apartment block) also constitutes development. Development, other than minor development, makes a property "new" for VAT purposes.

- "Completion" in the context of property, means the property is developed to the stage where it can be used for the purposes it was designed for, with water, electricity and other utility services connected, etc. The 5-year rule (see *subsection (2)*) kicks in from the date of completion.

- "Occupation" of a property means the property is physically in use (in accordance with the planning permission that was granted). The 2-year rule (see *subsection (2)*) kicks in from the date of first occupation.

Subsection *(2)* contains the rules for exempting the supply of immovable goods (land or property) from VAT as follows: **(2)**

- *Paragraph (a)* provides that the supply is exempt if the land or property was not developed in the 20 years before the supply. **(2)(a)**

- *Paragraph (b)* exempts a supply of property where the most recent development of the property has been completed more than 5 years beforehand. **(2)(b)**

- *Paragraph (c)* exempts a supply of a completed property that has been occupied for at least 2 years since its most recent development, if a previous taxable supply of the property between unconnected parties (whether taxable or not) had taken place since that development. **(2)(c)**

– *Paragraph (d)* exempts a supply of a property that was completed more than 5 years before the supply, but further "minor" development on that property is carried out since then. The supply will be exempt if that further development does not adapt the property for materially altered use and the cost of the development does not exceed 25% of the sale price. If the property is either materially altered or the cost exceeds 25% of the sale price, then the property is taxable. **(2)(d)**

– *Paragraph (e)* has a similar provision to deal with a supply of property that is subject to "minor" development during the 2-year occupation period. **(2)(e)**

The rules for exemption in this subsection are subject to anti-avoidance rules prohibiting exemption (*subsection (3)*), rules allowing options to tax (*subsections (5) and (7)*), rules for residential property (*subsection (8)*) and the transitional rules that impose a tax charge where input deductibility on acquisition was allowed (*section 95(7)(a)*)

The fact that property is exempt if it has not been developed could lead to avoidance opportunities. *Subsection (3)* is an anti-avoidance rule. It prevents the application of an exemption to the supply of a site that is to be developed, where the site is sold in connection with an agreement to develop that site. **(3)**

<u>Example</u>:

Landowner A, property developer B and purchaser C have a contractual agreement under which C has a contact with A to buy the land and a contract with B to construct a house on it. C's contract with A is contingent on the performance of the contract with B. This is a taxable supply.

The registration thresholds (*section 6(1)*) do not apply to property transactions. **(4)**

An option to tax a supply that is exempt in accordance with *subsection (2)* of this section or in accordance with the transitional rules in *section 95* (see *section 95(3) and 95(7)(b)*) is provided. **(5)**

– Both parties to the transaction must agree to opt to tax.

– The option may be exercised no later than the 15th day of the month following the month in which the supply occurs.

– The supplier and the purchaser must both be in business in the State.

– The agreement must be in writing and is called a "joint option for taxation".

Where the joint option to tax the supply is exercised in accordance with *subsection (5)*, then, the tax is accounted for by the purchaser on a reverse charge basis. **(6)**

- *Paragraph (a)* provides that the purchaser will be the accountable person who is liable for the tax.

- *Paragraph (b)* provides that the seller will not be accountable or liable.

A joint option for taxation on sales of exempt properties in situations where there is a "forced sale" is also available. This allows the finance company that repossessed the property and the person who is purchasing the property to jointly opt to tax the sale of the property. The VAT treatment of forced sales (excluding residential property which has been used as a principal private residence by an individual on which there are no VAT implications) is that the financial institution is responsible for paying the VAT to Revenue from the proceeds of the sale. **(7)**

In the case of exempt properties, there is a claw-back of VAT based on the VAT deducted by the defaulter. The claw-back is provided for under the capital goods scheme (CGS) and the seller (for example, financial institution, examiner, receiver or liquidator) is liable to pay this claw-back. However, the seller may not be in possession of the necessary information about the defaulter's VAT affairs to calculate the amount due under the claw-back. The information required relates to the amount of VAT that was deducted by the defaulter in relation to the acquisition and development of the property and the number of years that have elapsed since the property was acquired by the defaulter. This potential problem is circumvented by the availability of a joint option to tax the sale, which means the CGS claw-back is avoided.

- *Paragraph (a)* contains definitions. **(7)(a)**

- *Paragraph (b)* allows a joint option for taxation between the vendor and the purchaser, where the vendor is a liquidator, receiver or other person covered by *section 22(3)*, and the purchaser is a taxable person. **(7)(b)**

- *Paragraph (c)* provides that where *paragraph (b)* applies, the purchaser is liable for the tax and neither the vendor nor the owner are liable for that tax; and the vendor does not have to register for VAT or make a VAT return in respect of that transaction. **(7)(c)**

- *Paragraph (d)* provides that an option for taxation cannot be exercised where the purchaser is connected to either the vendor or the owner. **(7)(d)**

–

In general, residential properties are not covered by the exemption given in *subsection (2)*. In other words, the 5-year and 2-year rules do not apply to supplies of dwellings by a builder/developer. This subsection sets out the details. **(8)**

Paragraph (a) contains definitions. **(8)(a)**

The first supply of residential property by a person in the business of developing property (and who was entitled to VAT deductibility), or by a person connected to that person, is not an exempt transaction. **(8)(b)**

Where these properties are let prior to the first supply, the adjustment under the capital goods scheme is the annual adjustment as the letting is treated as a temporary arrangement that does not take the first supply of the property out of the VAT net. **(8)(c)**

NAMA or a NAMA entity (also see notes on *section 16(1)* for NAMA entity) is effectively treated in the same manner as property developers for the purposes of activities in relation to residential property. **(8)(d)**

An option to tax an otherwise exempt transaction is allowed to NAMA or a NAMA entity in certain circumstances. **(9)**

- *Paragraph (a)* gives the option to the recipient and provides that the "joint option" stipulation doesn't apply.

- *Paragraph (b)* states that the provision does not extend to exemptions under the old rules or under the transitional rules.

- *Paragraph (c)* provides that the option for taxation available to NAMA or a NAMA entity is deemed to have been exercised in most cases.

95. Transitional measures for supplies of immovable goods

Summary

This section deals with the transitional measures that apply to properties that have been subject to tax under the "old rules" in force prior to 1 July 2008 and are disposed of, or let, under the "new rules" post 1 July 2008. The transitional measures apply to both freeholds and leaseholds.

Details

The section applies to completed immovable goods (freeholds and freehold equivalent interests) that are acquired or developed by a taxable person prior to 1 July 2008 and that have not been disposed of by that taxable person before that date. The section applies until the goods are disposed of by the taxable person on or after 1 July 2008. In the notes on this section, these properties are referred to as "transitional properties". **(1)(a)**

The section also applies to interests (other than a freehold interest or a freehold equivalent interest) created by the taxable person prior to 1 July 2008 and held by that person on 1 July 2008. These are leasehold interests that were treated as supplies of goods under the old rules. The consideration on which VAT was charged (i.e. the taxable amount) included the capitalised value of the rent payable under the lease, as well as the premium, etc. The section applies to interests and reversionary interests until they are surrendered by the taxable person after 1 July 2008. In the notes on this section, these interests are referred to as "legacy leases". **(1)(b)**

This section also applies to completed immovable goods being residential property or burial grounds acquired or developed by a public body prior to 1 July 2010, but sold after that date. **(1)(c)**

Where an interest under *subsection (1)(b)* (in other words, a legacy lease) is surrendered, then, for the purposes of the capital goods scheme: **(2)**

(a) tax incurred includes tax chargeable on the surrender, but does not include tax incurred prior to the surrender.

(b) the adjustment period is set out in *subsection (12)(c)(iv)*, and the initial interval (the first 12 months of the adjustment period) starts on the day of the surrender.

The tax treatment of freeholds/very long leases under *subsection (1)(a)* (in other words, transitional properties) which are supplied "completed" depends on whether the holder could deduct VAT on the acquisition or development: **(3)**

Where a person was <u>not</u> entitled to deduct the tax chargeable on the acquisition or the development of the transitional property, and where those goods were not subsequently developed on or after 1 July 2008, other than "minor" development, the supply is not chargeable to VAT. However, a joint option for taxation under *section 94(5)* may be exercised, and tax is then payable by the purchaser under *section 94(6).* This is subject to the anti-avoidance provisions in *section 94(3).*

Exempt lettings are covered in *subsection (4)*. Where a taxable person: **(4)(a)**

– acquired, developed or has an interest in a transitional property or a legacy lease,

– was entitled to deduct tax charged on the acquisition or development of that property, and

– makes an exempt letting,

then, that person (i.e. the landlord) is required to calculate a deductibility adjustment, which is payable as if it were tax due for the taxable period in which that letting takes place.

The amount of this deductibility adjustment equals the amount of VAT deductibility that the landlord was entitled to deduct, less one twentieth for each year between the date of acquisition or the last development and the date of the surrender. **(4)(b)**

A receiver/mortgagee is obliged to calculate the relevant deductibility adjustment and pay any amount due, where the receiver was appointed or the mortgagee took possession of a transitional property in respect of which the owner had claimed deductibility and the receiver/mortgagee subsequently made an exempt letting of the property. **(4)(c)**

The assignment or surrender of a legacy lease is deemed to be a supply of immovable goods if it occurs within 20 years of the tenant's acquisition of it. (20 years represents the CGS life of the lease.) **(5)**

Whether or not it is taxable depends on whether or not the tenant had deductibility – see *subsection (7)*.

Where a person supplies transitional property or a legacy lease on which tax is chargeable but that person was not entitled to deduct the full amount of tax on the acquisition or development of the property, he or she is entitled to make the appropriate adjustment as if the capital goods scheme applied to that transaction (see *Chapter 2 of Part 8*). **(6)**

Public bodies may make a deductibility adjustment, no greater than the amount of VAT due on the sale, for housing and burial plots sold on or after 1 July 2010, which were acquired by them before that date and where there is otherwise no entitlement to VAT input credit. **(6A)**

The question of whether or not there is going to be VAT on the supply of the legacy lease under *subsection (5)* depends on whether the tenant was entitled to deduct input VAT when he/she acquired the lease. **(7)**

- Where a person was entitled to deduct tax on the acquisition of the legacy lease or development of the property, a charge to tax arises in the case of an assignment or surrender of an interest in that legacy lease. **(7)(a)**

- Tax does not arise on an assignment or a surrender of an interest in a legacy lease, where no right to deductibility arose on the acquisition or the development of the legacy lease, but a joint option for taxation may be exercised in such a case. **(7)(b)**

Example: X grants Y a 35-year lease on 1/7/2000 (old rules). VAT = €1million was charged on the capitalised value. This was deducted by Y. The tenant (Y) has the interest on 1/7/2008 (start of new rules).

The adjustment period is 20 years from 1/7/2000. Y assigns the lease to Z on 15/4/2012.

Because Y had deductibility, and because the assignment occurs within the 20-year period, the assignment is taxable (on a reverse charge basis).

There is a special rule for calculating the "taxable amount" for legacy leases. This applies despite the rules on taxable amount in *Chapter 1 of Part 5.* The tax rate is 13.5%. **(8)(a)**

Paragraph (b) contains the formula to be used for the calculation of tax on assignments or surrenders where *subsection (7)* (legacy lease) applies, and confirms that the tax is subject to the reverse charge mechanism. **(8)(b)**

The cost of development by the tenant (i.e. refurbishment) is excluded when calculating the amount of tax due. Refurbishment by the tenant is covered by the capital goods scheme (*Chapter 2 of Part 8*).

Example: Following on from the example above, the amount in accordance with the formula = T x N/Y = €1m x 9/20 = €450,000.

This is the tax payable. The taxable amount = €450,000/0.135 (i.e. the tax payable regrossed at 13.5%, in accordance with *subsection (8)(a)*).

Paragraphs (c) to (e) provide for a reverse charge mechanism in relation to the VAT payable, under which the recipient of the interest must account for the tax as if he or she made the supply.

The reverse charge arises where the person to whom the interest is assigned or surrendered is one of the following: **(8)(c)**

- an accountable person,
- a Department of State or a local authority, or
- a person who acquires the property for the purposes of making any of the following exempt supplies in the course or furtherance of business:
    - an exempt supply of property,
    - financial services,
    - exempt lettings of property - short term,
    - agency services in relation to, financial services,
    - insurance services,
    - public postal services,
    - public broadcasting services,
    - passenger transport.

Where the person or entity acquiring the interest under the reverse charge is not registered for VAT, that person or entity must register for VAT in respect of that transaction.

Where the State or a local authority acquires an interest subject to the reverse charge, it is accountable and liable regardless of the provisions of *section 14(2)* relating to the tax treatment of public bodies. **(d)**

The surrender or assignment of an interest in property is treated as a supply of goods by the recipient. **(e)**

However, the person who makes the surrender or assignment continues to be entitled to deductibility as if he/she made a taxable supply of the goods. Such a person is obliged to issue a document to the recipient of the property setting out the taxable value of the surrender or assignment and the amount of VAT involved. *The reason for this requirement is that, once the transaction is treated as a supply by the recipient, the person who makes the surrender or assignment would, in the absence of such a requirement, no longer be obliged to issue a full VAT invoice.*

Where a legacy lease is assigned or surrendered to a taxable person, then the person who makes the assignment or surrender must issue a document to the person to whom the interest is assigned or surrendered, showing the amount of tax due and payable and the number of intervals remaining in the adjustment period. (The person who takes the assignment /surrender is responsible for the VAT on a reverse charge basis under *subsection (8)*.) **(9)(a)**

Where *subsection (9)(a)* applies, the person to whom the interest in immovable goods is assigned or surrendered is to be regarded as a capital goods owner and the provisions of the capital goods scheme apply. **(9)(b)**

Example: In the example above, tax due = €450,000 and intervals left = 9. Z, who has taken the assignment/surrender, is the capital goods owner.

Where a person who has elected to register in respect of a holiday home wishes to cancel that election, the "old rules" (as opposed to the capital goods scheme rules) continue to apply, provided the holiday home is owned by that person on 1 July 2008 and is not further developed after that date. **(10)**

In general, the capital goods scheme does not apply to transitional properties and legacy leases. **(11)**

It does, however, apply to refurbishments that are completed after 1 July 2008. **(11)(a)**

It also applies on or after 23 February 2010 to transitional properties and legacy leases in a "big swing" situation (i.e. where there are big (more than 50%) changes in taxable/exempt use). If a transitional property on which deductibility has been claimed is put to exempt use, then a once-off adjustment is made under that scheme with a clawback of part of the VAT that was deducted. If the company subsequently puts that property to a taxable use, a once-off adjustment is made to claim back the appropriate amount of VAT. **(11)(b)**

The various capital goods scheme definitions are applied, as appropriate, for the purposes of the transitional measures. **(12)**

- An interest in goods covered by the section is treated as a capital good. **(12)(a)**

- The person holding the interest is the capital goods owner, but a person holding the reversionary interest in a legacy property is not the owner if he/she didn't develop the goods. **(12)(b)**

- The adjustment period for transitional properties and legacy leases is as follows: **(12)(c)**

    - Acquisition of the freehold/freehold equivalent – 20 years from date of acquisition. **(12)(c)(i)**

    - Creation of an interest – 20 years, or number of full years if less than 20. **(12)(c)(ii)**

    - Assignment/surrender of an interest before 1 July 2008 – 20 years, or time left, if less than 20 years. **(12)(c)(iii)**

  - Surrender/first assignment of an interest after 1 July 2008 – number of full years remaining in the adjustment period (calculated under (ii) or (iii) plus 1. **(12)(c)(iv)**

  - Second or subsequent assignment after 1 July 2008 – number of number of full years remaining in the adjustment period (calculated under first assignment) plus 1.

- If the goods were developed since the acquisition/creation of the interest, the adjustment period is 20 years from the most recent development except where that development constitutes a 'refurbishment' for VAT purposes.

- The tax chargeable on the acquisition/development is the "total tax incurred" under the CGS. **(12)(d)**

- The "base tax amount" is the total tax incurred divided by the number of intervals. **(12)(e)**

- An "interval" is each year in the adjustment period. **(12)(f)**

- The "initial interval" is the first 12 months. **(12)(g)**

- The "second interval" is the second year, or the normal CGS second interval in the case of an assignment/surrender on or after 1 July 2008. **(12)(h)**

- The "subsequent interval" means each of the following years. **(12)(i)**

- The "total reviewed deductible amount" is the total tax incurred (see *subsection (12)(d)*) less specified non-deductible amounts incurred before 1 July 2008, etc. **(12)(j)**

- The "non-deductible amount" is the tax incurred (*paragraph (d)*) minus the amounts that are not deductible (*paragraph (j)*). **(12)(k)**

Subsection (13) deals with properties acquired after 1 July 2007. The taxable person is required to make an adjustment under the capital goods scheme. However, this requirement is set aside if an adjustment has already has been made under *section 61(7)* (apportionment for dual use inputs). This ensures that a taxable person is not obliged to make two adjustments for the property. **(13)**

(In this context, note that section 61(7) now only applies to moveable goods and not immovable goods; before the introduction of the CGS on 1 July 2008 it applied to both.)

96. Waiver of exemption under old rules

Summary

This section deals with old and transitional measures in relation to exempt lettings of properties. Under the old waiver rules in place up to 1 July 2008, a trader engaging in the exempt letting of property could opt to become accountable for tax on the rent by waiving his/her right to exemption in accordance with regulations. When a person waived the right to exemption, the standard rate of VAT applied to the letting.

Transitional measures for short-term lettings of immovable goods, where a waiver of exemption applied, are also dealt with. The waiver of exemption rules with regard to short-term lettings and the cancellation rules in respect of such waivers continue to apply to any lettings in place before and on 1 July 2008 except where it is a letting between connected parties.

This section provides that a waiver will not apply to connected lettings with effect from 1 July 2008 unless the VAT on the annual rent exceeds a certain minimum level. It also limits the possibility for taxpayers to use the period before 1 July 2008 to create new avoidance scheme for transitional properties. If a landlord and connected tenant formed a VAT group since July 2008, or formed a VAT group after the passing of the Finance (No. 2) Act 2008, an immediate VAT liability to the waiver cancellation amount is triggered.

Details

The letting of immovable goods is an exempt activity in accordance with *paragraph 11 of Schedule 1*. The right to waive that exemption was provided for in section 7(1) of the Value-Added Tax Act 1972. **(1)**

A waiver under the old rules ceases to have effect at the end of the taxable period in which it is cancelled. **(2)**

Where a taxpayer cancels a waiver, he/she has to repay any net VAT refund received by him/her in relation to the taxable lettings covered by the waiver. The taxpayer is required to repay the difference between any tax accounted for on the rents and any tax refunded to him/her in connection with the lettings**.** This covers: **(3)**

- The amount deducted as input credits. **(3)(a)**

- Any deductibility claimed prior to waiving in respect of the acquisition or development of the property that is subsequently let on a short-term basis must be included in the cancellation adjustment. **(3)(b)**

– Also, the cancellation clawback operates even where a property was acquired— **(3)(c)**

  – as part of a VAT-free transfer of a business under *section 20(2)(c)*, or

  – as part of a zero-rated supply to a trader authorised in accordance with *paragraph 7(7) of Schedule 2*. **(3)(d)**

This subsection thus ensures the same treatment on cancellation regardless of how the taxpayer acquired the property

Where a person has waived his/her right to the exemption, he/she is liable for tax on the rents as if the letting was not specified in *Schedule 1*. This means the person making the waiver is liable at the standard rate. **(4)**

In the case of a person who cancelled his or her waiver of exemption prior to 1 July 2008, the adjustment period for any capital good included in the waiver cancellation sum is treated as ending on the date of that cancellation. This ensures that in those circumstances the person will not be required to make any adjustments under the Capital Goods Scheme (CGS) for those capital goods. In practical terms, it relieves the taxpayer of any obligations under the scheme but also ensures there will be no unjustified entitlement to VAT credit. **(5)**

Transitional measures cover landlords who have a waiver in place before and on 1 July 2008. **(6)**

In the case of a person who cancelled his or her waiver of exemption prior to 1 July 2008, the adjustment period for any capital good included in the waiver cancellation sum is treated as ending on the date that a person cancels his or her waiver of exemption. **(7)**

This ensures that the person in question has no further obligations under the CGS for those capital goods. It also ensures that no unjustified entitlement to credit will arise after the waiver is cancelled.

Subsection (8) deals with lettings between connected parties. Under the old rules a waiver applies to all short-term lettings of property. This subsection provides that a waiver ceases to apply with effect from 1 July 2008 to any letting between connected persons in respect of which a landlord's option to tax would not be allowed (viz. where the letting is between connected persons and the lessee is not carrying on a mainly (90%) taxable business). **(8)**

– An amount calculated on the basis of the waiver cancellation amount in respect of that individual property is payable. **(8)(a)**

- If that waiver covers other lettings also, the amount paid under this subsection is disregarded for the purposes of calculating the cancellation amount when that other waiver comes to be cancelled. **(8)(b)**

There is an exception to the requirement that waivers must be cancelled when the landlord and tenant are connected when the VAT on the rents reaches a minimum amount and other conditions apply. If the tax accounted for on a letting between connected persons is not less than the amount calculated in accordance with the formula in *subsection (10)*, then, the waiver may continue to apply to that letting. **(9)(a)**

If the lease changes or if the amount paid in rent falls short, then the waiver is cancelled. **(9)(b)**

The continuation of a waiver as outlined above applies to a letting of a property in respect of which the landlord had a waiver in place on 18 February 2008 and— **(9)(c)**

- that letting was still in place on 1 July 2008, or
- on 18 February 2008 the landlord owned the property in question and was in the course of developing that property on that date.

It also applies to a letting of a property in respect of which the landlord holds a long lease (but not a freehold equivalent interest), and that long lease was acquired from an unconnected party between 18 February 2008 and 30 June 2008.

Subsection (10) contains the formula for calculating the minimum amount of tax payable on a letting between connected persons for the purposes of allowing a waiver to continue to apply. **(10)**

Example:

X acquires a property in 2002 for €750,000. VAT @ 13.5% charged on the acquisition = €101,250. Exemption is waived. That amount of VAT is deducted by X. Property is let to a connected person. VAT charged on rents up to 1 July 2008 = €48,000.

In the formula, A = €101,250, B = €48,000 and Y (number of full years since the first letting) = 5. (A – B)/(12 – 5) = €7,609

€7,609 is the minimum VAT payment in respect of the rent that must be made for the next 12 months in order to keep the waiver alive. (*The idea here is that the VAT on the rents must at least equal the VAT deducted on the acquisition or development of the property*.)

There is provision for the immediate cancellation of any waiver of exemption that was in place before 1 July 2008 where a landlord enters a group on or after 1 July 2008 and lets the property to a person in the group. **(11)**

Subsection (12) deals with transactions that take place after 3 June 2009. **(12)**

It defines 'relevant immovable goods' as goods that the landlord has to take into account in calculating the clawback under the old rules. It provides that the waiver of exemption is automatically cancelled when a person no longer has any property to which the waiver applies.

Where a person owned a property that was subject to the waiver of exemption on 1 July 2008 (when the new rules for VAT on property came into effect) but no longer had properties which are subject to the waiver, the waiver was automatically cancelled on the date of passing of the Finance Act 2009 (i.e. 3 June 2009), and the person had to pay the waiver cancellation sum. (Since 1 July 2008 it has not been possible to extend a waiver to any new property.)

97. Option to tax letting of immovable goods

<u>Summary</u>

This section provides an option to landlords to tax lettings of commercial properties. It specifies the circumstances under which the landlord can opt to tax the rents under rules effective from 1 July 2008. Opting to tax the rent enables a landlord to claim deductibility on his or her purchase or development of the property. If the tenant is in a taxable business, the tenant can deduct the VAT on the rent. The option to tax is not allowed where the landlord and tenant are connected parties and the tenant has less than 90% deductibility. There is no option for a landlord to tax a new residential letting.

Note that the option to tax is letting specific – in other words, the landlord can opt, or not opt, to tax each letting. This contrasts with the waiver of exemption system available for short-term lettings under the old (pre- 1 July 2008) rules. Also, the new system does not distinguish between short-term lettings and leases for over 10 years.

<u>Details</u>

Tax is chargeable on rents (at the standard rate of VAT) where the landlord opts to tax the letting. Where the option is exercised, the landlord is an accountable person in respect of the letting and is liable to account for the VAT on the rents and the letting is not an exempt letting. **(1)(a)**

A person who is entitled to deduct the VAT incurred on the acquisition or development of a property, on the basis that the letting of that property will be taxed, will be treated as having exercised the landlord's option to tax and that option will remain in place until neither of the conditions in *paragraph (c)* apply. In other words, if the landlord claims VAT deductibility on the building, architectural costs, etc., he or she is deemed to have exercised an option to tax. **(1)(b)**

A landlord's option to tax is exercised— **(1)(c)**

(i) by including a provision for the taxation of the rents in the letting agreement, or

(ii) by the landlord notifying the tenant that the rent is taxable.

A landlord's option to tax is terminated by— **(1)(d)**

(i) making an exempt letting of the property, after claiming deductibility for the input VAT,

(ii) making a new agreement in writing with the tenant that the letting is no longer taxable or giving the tenant a notification to that effect. The termination cannot be earlier than the date of the agreement to terminate the option or the date notification of the termination is received by the tenant.

It is also terminated if—

(iii) the landlord and tenant become connected persons,

(iv) the landlord or a person connected to the landlord occupies the property (including by way of a sublease), or

(v) the property is used for residential purposes.

<u>Example:</u>

X develops a building in 2010, which is to be let to commercial tenants. He/she registers for VAT on the basis that he will make taxable lettings. He/she claims a repayment in respect of the VAT charged by the builder, etc.

When the building is let, X includes a provision in the agreement that the rents will be taxable. He/she charges VAT on the rents and accounts to Revenue for the tax. (If circumstances change and VAT is not charged on the rents, there is a CGS adjustment and X must repay the VAT that he/she deducted.)

A landlord may not opt to tax a letting where that landlord or a person connected to that landlord occupies the property by way of letting or otherwise. This includes subleases – for example, A lets to B (not connected); B sublets to C, who is connected with A. This ends the option to tax and there is a CGS clawback. **(2)(a)**

However, the connected persons rule does not apply (i.e. the option to tax applies) where the tenant is entitled to at least 90% deductibility for the rents. **(2)(b)(i)**

If the landlord exercises the option to tax in this case, the connected persons ban reapplies where the tenant's deductibility falls below 90%. **(2)(b)(ii)**

Similarly, the connected persons "subletting" rule does not apply (i.e. the option to tax applies) where the tenant is entitled to at least 90% deductibility for the rents. **(2)(c)(i)**

If the landlord exercises the option to tax in this case, the connected persons ban reapplies where the tenant's deductibility falls below 90%. **(2)(c)(ii)**

Subsection (3) defines connected persons for the purposes of this section. Briefly, the concept of connectedness is defined in terms of relatives (individuals) and in terms of control and commonality of interests. **(3)**

A landlord may not opt to tax lettings of residential properties. (A similar rule existed under the old waiver of exemption system in place pre- 1 July 2008.) **(4)**

If there is an existing option to tax and the property is then used for residential purposes, the option ceases to have effect. **(5)**

98. Valuation of an interest in immovable goods

Summary

This section sets out the rules for the valuation of an interest in immovable goods.

Details

Subsection (1) defines "interest", "open market price" and "unencumbered rent" for the purposes of the section. **(1)**

- "*interest*" is construed in accordance with the "old" property rules in *section 93(1).*
- "*open market value*" has the meaning assigned to it in *section 36*.

– "*unencumbered rent*" means rent with no restrictive conditions.

Revenue has the authority to obtain independent valuations of property for VAT purposes and to authorise persons to inspect properties and report the value of those properties. Occupiers must allow authorised persons a right of entry at all reasonable times. **(2)(a)**

Revenue will pay the cost of the valuations. **(2)(b)**

PART 12 – REFUNDS AND REPAYMENTS OF TAX

Overview

This Part contains 7 sections on refund and repayment provisions (*sections 99 to 105*). The general rule is that where a registered trader's VAT on purchases exceeds his or her VAT on sales, the excess is refunded. This is normally done on the basis of the trader's 2-monthly VAT return. Claims must be made within 4 years. Traders who overpay VAT – due to a mistaken assumption in the operation of the tax – may be able to reclaim the VAT overpaid in certain circumstances, subject to an unjust enrichment provision. There are two sections dealing with refunds to foreign traders. One sets out the legislative basis for an electronic refund procedure for businesses operating from other EU Member States. The other provides for regulations to allow repayment of deductible Irish VAT suffered by non-EU based businesses.

The Part also covers Ministerial refund orders, refunds and repayments in certain circumstances and rules on when Revenue will pay interest on refunds of VAT.

99. General provisions on refund of tax

<u>Summary</u>

This section provides for repayment of VAT where input credit (VAT on purchases) exceeds output VAT (VAT on sales) liability. Claims for repayment must be made within 4 years of the relevant taxable period, and Revenue may pay the amount directly into the trader's bank account. There is provision for deferring repayments to a trader about to enter a VAT group, where any group member's tax affairs are not in order. There is also provision for requiring security from a taxpayer.

<u>Details</u>

Subsection (1) provides for the ordinary case of repayment, that is, where the total of the tax suffered on inputs exceeds the gross liability for the period. In such a case, the excess is repayable and such repayment will normally be made on the basis of the two-monthly return sent by the person to the Collector-General. This is subject to *subsections (2) and (3).* **(1)**

Deferment of refund is provided for under *subsection (2)*. Revenue are allowed to defer a repayment due to any person in a group registration for a period prior to the application of that group registration, where the tax affairs of one or more of the other persons involved are not in order. **(2)**

Revenue has the power to require security from a taxpayer, where they consider it necessary to do so for the protection of the revenue, as a condition for making a refund of VAT. The manner and form of such security will be decided by Revenue. The security would generally take the form of an insurance bond or bank guarantee. The amount of the guarantee cannot exceed the amount of the refund. **(3)**

A claim for a refund of tax must be made within 4 years after the end of the relevant taxable period. **(4)**

Note that the time limits are shorter in respect of refund claims by foreign-based traders: Intra-Community refund claims from traders in other EU countries must be submitted by 30 September the following year – see *section 101*. Claims by non-EU based taxable persons under the Thirteenth Directive must be made within 6 months of the end of the calendar year in which the tax became chargeable – see *section 102* and Regulation 37 of the VAT Regulations 2010.

Revenue may make VAT refunds to VAT-registered traders directly into a bank or building society account nominated by the trader. (This also applies to refunds on foot of unjust enrichment claims – see *section 100*.) **(5)**

Subsection (6) specifically provides that refunds of VAT can only be made under the provisions of the VAT Act or under secondary VAT legislation. **(6)**

100. Unjust enrichment

Summary

This section provides that an accountable person is entitled to claim VAT overpaid incorrectly. However, Revenue will not repay a claim if repayment would lead to the unjust enrichment of the claimant.

Basically, unjust enrichment occurs where a person would get a windfall gain if repaid the tax that was paid in error. This happens in circumstances where the cost of the overpaid tax was actually passed on to the person's customers in the price charged for goods and services. Revenue will not repay tax that has already been passed on in whole or in part to the customer.

The section, however, allows for compensation to a trader for loss of business due to the incorrect application of VAT in certain circumstances, even where the cost of the overpaid tax was passed on to the trader's customers. If a trader can establish a loss of business, he or she will be entitled to a refund of the part of the overpaid tax that would compensate for any associated loss of profits.

Finally, the section provides that where a trader undertakes to reimburse the customers who have actually borne the cost of the overpaid tax, Revenue will refund the VAT claimed. Before a refund is made, the trader must have adequate arrangements in place to reimburse those customers. Any trader who does not reimburse customers within 30 days of receiving a refund must pay the amount not reimbursed back to Revenue.

Details

An accountable person has a right to a refund of any tax overpaid as a result of a mistaken assumption, unless Revenue determines that the amount or any portion of the amount claimed would give rise to unjust enrichment. **(1)**

The mistaken assumption could result in these circumstances:

– a person could account for an amount of tax that was not properly due, for example, a person may have charged VAT at the standard rate on the supply of a particular service when the 13.5% rate should have been charged. **(1)(a)**

– a person's supplies may have been treated incorrectly as exempt from VAT and accordingly the person did not submit a VAT return in respect of a repayment that was due to him or her. **(1)(b)**

– a person did not deduct an amount of VAT in respect of 'qualifying activities' as defined in *section 59(1)*. **(1)(c)**

A claimant, when submitting a claim for a refund of overpaid tax to Revenue, must provide full details in writing of the circumstances of the case together with a calculation of the amount of tax due for each taxable period covered by the claim. **(2)(a)**

In addition, a claimant is required to submit such documentation in support of a claim as is requested by Revenue. It is not appropriate in a "mistaken assumption" case to make a claim on a normal VAT return. **(2)(b)**

In determining whether a refund would give rise to unjust enrichment of a claimant, Revenue must establish the extent to which the cost of the overpaid amount has been passed on in the price charged on goods or services to the customer. In order to do this, Revenue must take account of any loss of profit suffered by the claimant, based on Revenue's own analysis and on any information provided to them by the claimant. **(3)**

Where Revenue has determined that a refund or a partial refund of tax would not give rise to unjust enrichment of the claimant, then that refund or partial refund will be made. **(4)**

Where a trader undertakes to reimburse the overpaid tax to his or her original customers, Revenue will refund the amount of VAT claimed plus interest, in accordance with *section 105*, provided they are satisfied that the trader has arrangements in place to identify and reimburse the customers. **(5)**

A trader who fails to reimburse his or her customers within 30 days of receiving the refund is liable to repay that amount of refund to Revenue. **(6)**

101. Intra-Community refunds of tax

Summary

This section deals with VAT refunds to foreign traders in other Member States. It implements Council Directive 2008/9/EC, which was adopted on 12 February 2008 and came into force on 1 January 2010. This Directive provides for an electronic refund procedure for foreign traders. The main features are:

- refund applications must be made through an electronic portal set up by the Member State of establishment of the applicant;
- each application is subject to an electronic approval process in the Member State of establishment before being passed on to the Member State where the VAT was incurred by the business (the Member State of refund).

Details

Subsection (1) contains definitions. **(1)**

- the applicant is the taxable person who is established in a Member State other than the Member State of refund, and who carries out transactions giving rise to a right of deduction in that Member State;
- the Member State of refund is where the VAT was charged to the applicant in respect of goods or services that were supplied to him/her or on imports into that Member State;
- the refund application is the electronic form;
- transactions are either deductible (i.e. give rise to a right of deduction in a Member State) or not deductible (i.e. do not give rise to such a deduction).

Revenue is empowered to refund applicants for VAT they paid on supplies they received in the State or on imports of goods into the State, where a proper application from the applicant's Member State (MS) is received. **(2)**

The rules on calculating the amount of refund are set out in *subsection (3)*: **(3)**

- *Paragraph (a)* provides that the amount of tax refundable is the amount that the applicant was charged on business supplies received or on goods imported into the State, but only to the extent that he/she would have got deductibility in the State under Irish rules. This is subject to *paragraph (b)*.

- *Paragraph (b)* provides that if the applicant undertakes deductible and non-deductible transactions in his/her home MS, the refund amount is the proportion attributable to the deductible transactions, as determined by the home MS – see *subsection (5)* below for rules about correcting the application when the deductible proportion changes.

Refund claims must be made electronically by the applicant through the dedicated portal set up in the applicant's own MS. **(4)**

There is provision for the making of a correcting application when the deductible proportion calculated under *subsection (3)(b)* subsequently changes. **(5)**

The timing rules and tax details required on applications in the case of refunds to be made by Revenue are as follows: **(6)**

- Tax details cover the tax charged in respect of supplies invoiced to, and imports made by, the applicant in the refund period. Tax omitted from a previous application may also be included, if the transaction was completed in the year.

- Applications cover 3 months to 12 months (calendar year), but can be less than 3 months for the calendar quarter starting 1 October.

- Applications must be lodged on or before30 September in the year following the refund period.

There are two *de minimis* rules: **(7)**

- If the refund is for 3 months – 12 months (calendar year), the *de minimis* is €400.

- There is a *de minimis* of €50 for claims relating to the last quarter (which can be less than 3 months – see *subsection (6)*) or a calendar year.

Revenue must notify the applicant electronically if they decide not to forward his/her refund application to another Member State on the grounds that the applicant is not entitled to a refund. **(8)**

Subsection (9) sets out the actions taken by Revenue on receipt of a refund application. **(9)**

- The application is acknowledged as soon as possible.

- Broadly, a decision is made on approval/rejection within 4 months and the applicant is notified. This time period is extended where additional information is requested.

- Originals/copies of invoices or import documents may be requested, the tax authorities in the applicant's MS may be contacted, and so on in order to establish the validity of the claim.

- Revenue has 10 working days to pay the refund when an application is approved.

- The reasons for rejection must be included in the notification when a refund application is refused.

Revenue is allowed to deduct bank charges from refund payments that they make, at the applicant's request, to another MS. **(10)**

Applicants must repay, with interest, refund amounts that were overpaid because of incorrect claims. **(11)**

Revenue will withhold the payment of a refund where the applicant owes money in respect of an earlier overpayment. **(12)**

Revenue must pay simple interest at the daily rate of 0.011% (see *section 105(4)*) in respect of amounts not refunded on time. Interest is not payable where information requested by Revenue is submitted late or is incomplete. **(13)**

The refund rules in the section do not apply in cases where the applicant should be registered for VAT in the Member State of refund. For example, if a German business supplies goods and services into Ireland, it would normally be obliged to register in the State, unless the supplies are to customers that are liable under the reverse charge rules – in this case, it won't have to register in Ireland as the recipient is accountable and liable. **(14)**

The subsection provides that applicants supplying goods and services that are deemed to be supplied in the refund Member State are excluded from the refund scheme, except in the case of reverse charge supplies, supplies under the special scheme for telecommunications services, broadcasting services and electronically supplied services (Union scheme) or exempt transport.

102. Refunds to taxable persons established outside the Community

This section provides for regulations which will allow for repayment of deductible tax (which is defined) borne on purchases and importations of goods and services made by a foreign business that is established outside the EU, where the business is not engaged in any taxable activity in the State.

This section enables non-established persons (including non-established persons supplying services which are taxable in the State under the reverse charge rules) to claim a refund.

Deductible tax is the tax chargeable on goods and services used by the foreign trader for business purposes, but only if the VAT would be deductible if the foreign trader were accountable and registered for VAT in the State. It does not cover VAT on goods for supply within the State. **(1)**

Revenue may make regulations to repay non-established traders the deductible tax charged on supplies of goods or services to, or imports by, the foreign trader. See Regulation 37 of the VAT Regulations 2010. **(2)**

The section applies to non-established persons carrying on a business outside the EU, and who do not supply goods or services in the State other than **(3)**

- certain services for which the recipient is accountable and liable under the reverse charge rules in *Part 2* or
- telecommunications services, radio or television broadcasting services or electronically supplied services under the non-Union scheme.

103. Ministerial refund orders

Summary

This section authorises the Minister for Finance to order repayment of tax in certain circumstances.

Details

Subsection (1) allows the Minister to make orders, which will enable repayment of tax to be made to persons who fulfil the conditions set out in the orders. **(1)**

Subsection (2) allows the Minister to amend or revoke an order. **(2)**

Subsection (2A) provides that when making a refund order, the Minister considers the nature of the goods or services to which the order relates and/or the nature of the person to whom the refund order relates. **(2A)**

Subsection (2B) provides that the Minister may include in an order a requirement for a person who receives a refund to carry out a review after a specified event or period, to ensure that conditions in the order have been fulfilled, and to repay all or part of the refund to the Revenue Commissioners if those conditions have not been fulfilled. **(2B)**

Subsection (3) provides that a refund order made by the Minister may have retrospective effect if this is expressed in the order. **(3)**

Subsection (4) provides for the laying of the order before the Dáil. **(4)**

104. Repayments in specific circumstances

Summary

This section provides for repayment of VAT to be made in different situations.

Firstly, there is a provision allowing repayment of VAT to an individual (or other person without VAT deductibility) who paid VAT on a new means of transport which is subsequently dispatched to another Member State, where more VAT is payable. Repayment of residual VAT is allowed in order to avoid double tax. Secondly, there is a provision which prevents double taxation occurring in respect of prepaid telephone cards. Thirdly, there is a full refund of the VAT element of radios purchased by certain bodies for blind persons.

The section also provides for the making of regulations to permit remission or repayment of VAT on goods shipped on boats/planes to a place outside the State or on goods used in the commercial sea-fishing industry.

Details

Subsection (1) provides that VAT may be repaid (in accordance with regulations) to any private person or an exempt or non-taxable entity who has paid VAT on the purchase of a new means of transport which is subsequently dispatched or transported to another Member State. **(1)**

Under EU VAT arrangements, the basic principle is that a new means of transport is always taxable in the Member State of consumption. Therefore if, following purchase, a new means of transport is subsequently dispatched or transported to another Member State, it will be liable to acquisition VAT in that other Member State. This subsection provides for the repayment of residual VAT contained in the vehicle to avoid double taxation.

Subsection (2)(d) deals with prepaid telephone cards and ensures that double taxation does not occur because the tax will apply at the time of the supply of the prepaid telephone card and not at the time when the card is subsequently used to access a telecommunications service. **(2)**

(Telephone cards are defined in *section 2(1)* in terms of conferring a right to access a telecommunications service or third-party goods and services in certain circumstances.)

Subsection (3) authorises full repayment of the tax element on radios provided by certain bodies for the blind. Such a body must establish to the satisfaction of Revenue that it has for its primary object the amelioration of the lot of blind persons and that the radios to which the claim relates are used for that purpose. **(3)**

On proof of the facts, a full refund will be made of all tax suffered on the radios in question whether paid on importation, at the manufacturing stage or at any subsequent stage.

Subsection (4) provides for regulations which will permit remission or repayment of VAT: **(4)**

- on goods shipped on foreign bound ships or aircraft.
- on goods used on fishing boats and associated equipment for the purposes of commercial sea-fishing.

Subsection (5) provides for regulations which will permit remission or repayment of tax on services related to the goods in subsection (4), namely: **(5)**

- services linked to the repair, maintenance and hire of equipment used in an aircraft or vessel specified in *paragraph 4(2) of Schedule 2.*
- services linked to the repair, maintenance and hire of fishing boats and associated equipment for commercial sea-fishing.

(See Regulation 38 of the VAT Regulations 2010).

105. Interest on refunds of tax

Summary

This section provides for Revenue to pay interest on refunds of VAT to a claimant in two circumstances. These are where:

- there is a mistaken assumption in the operation of the tax made by Revenue, or
- there is a delay of more than 93 days (3 months) in processing a fully completed claim.

The rate of interest is 0.011% per day.

Details

The terms “claimant”, “overpaid amount”, “refundable amount” and “valid claim” are defined for the purposes of this section. **(1)**

Where a mistaken assumption in the operation of the tax is made by Revenue, which results in a refundable amount of VAT being due to a claimant, interest on that amount is payable to the taxpayer. **(2)**

“Mistaken assumption in the operation of the tax” cover situations where there is a reinterpretation of an existing provision. This could arise, for example, from a decision by the Appeal Commissioners, by a domestic court or by the European Court of Justice. It could also arise from a change in interpretation made by Revenue.

Where a mistaken assumption in the operation of the tax is made, the interest is calculated from—

- in the case of an overpaid amount, from the date of receipt of that amount, and **(2)(a)**
- in the case of any other refundable amount, either from: **(2)(b)**
  - (i) the 19th of the month following the taxable period in which the claimant would have been entitled to receive the amount, or
  - (ii) where a VAT return is required, from the date of its receipt,

to the date the amount is paid by Revenue.

Subsection (3) covers cases of administrative delays. It obliges Revenue to pay interest if a VAT repayment has not been made after the expiry of 93 days from the date of receipt of a valid claim for repayment. The claimant must provide Revenue with whatever details or records they request to validate the claim. **(3)**

Interest will be paid from the date of expiry of the 93 days up to the date the repayment is made, excluding the time correspondence is ongoing with the accountable person concerning the claim. Note that the provision does not cover simple arithmetical errors or cases where Revenue withholds a refund pending the filing of an outstanding tax return by the taxpayer.

Simple interest is calculated from the date on which the amount becomes payable and is chargeable at a rate of 0.011% per day, or part of a day, during which the amount remains unpaid. This rate can be changed by Ministerial Order. (Note that interest is chargeable at the rate of 0.0274% per day in respect of VAT underpaid by an accountable person – see *section 114*.) **(4)**

Interest will not be paid where it amounts to less than €10. **(5)**

Revenue can only pay interest on VAT repayments in accordance with the terms of this section. **(6)**

Also, the section will not apply in cases where any interest is payable (on a refund of tax). This is because, under section 941 of the Taxes Consolidation Act 1997 interest will become a mandatory part of the payment to be awarded by the Courts in certain circumstances.

The Minister for Finance may make orders prescribing the rate of interest which is payable under this section. These are subject to the usual procedural rules. **(7)**

Revenue may make regulations relating to the operation of this section. **(8)**

PART 13 – ADMINISTRATION AND GENERAL

Overview

This Part, which contains 4 Chapters, sets out the provisions relating to the administration of the tax.

Chapter 1 deals with general administrative provisions and places VAT under the care and management of Revenue. *Chapter 1* also includes Revenue's powers to enter business premises and, in some cases, inspect and remove a trader's records. (*Sections 106 to 108*).

Chapter 1A deals with special measures for the protection of the tax and includes Revenue powers to address tax evasion and fraud. (*Sections 108A to 109*).

Chapter 2 covers estimates, assessments, electronic returns and time limits (*sections 110 to 113*). Where a person fails to make a VAT return, Revenue has power to make an estimate of the VAT due. Where a trader makes a VAT return but understates the liability, Revenue may make an assessment for any further VAT due. A person may lodge an appeal against an estimate on the grounds that he or she is not an accountable person; an assessment may be appealed on the grounds that the amount is excessive. The time limit for raising estimates and assessment is normally 4 years. There is no time limit in the case of fraud or neglect.

Chapter 3 deals with interest and penalties (*sections 114 to 118*). Simple interest, at the rate of 0.0274% per day, is charged where VAT becomes payable by an accountable person but is not paid, or where a refund is over-claimed. Interest is also chargeable on arrears of tax established by means of estimates or assessments. There are also prescribed penalties – generally €4,000 – for failure to comply with specific requirements of VAT legislation, such as the obligations to register or to keep proper records. Additional penalties apply in cases of fraud or neglect – in this case, the amount is based (*inter alia*) on the amount of the tax loss.

Chapter 4 deals with appeal provisions, along with Revenue's power to make regulations for the purpose of administering the tax (*sections 119 and 120*).

Chapter 1 - Administration

106. Care and management of tax

This section places VAT under the care and management of Revenue.

107. Officer responsible in case of body of persons

Summary

This section provides that the secretary of a company or other body of persons will be responsible, in addition to the company itself, for the performance of any acts required to be done by the company in relation to tax.

Details

The provisions in relation to which the secretary, as well as the company, etc. will be accountable are the provisions of the Value-Added Tax Consolidation Act 2010, regulations and any subsequent VAT law. **(1)**

The secretary (or other officer temporarily acting as secretary) is answerable, in addition to any responsibility devolving on the company, for complying with VAT law provisions. **(2)**

The secretary may retain sufficient funds out of the company's money in order to pay any tax due and will be indemnified for any such tax payments. **(3)**

Any notice that is required under VAT law to be given to a body of persons may be given to the secretary. **(4)**

108. Inspection and removal of records

Summary

This section enables Revenue, through their authorised officers, to enter business premises, inspect business records, and in certain circumstances, to remove the records and retain them for a reasonable time.

Details

The terms "authorised officer" and "records" are defined for the purpose of the section; records includes computerised records. **(1)**

Authorised officers of Revenue have the power to enter business premises to— **(2)**

- require the production of the books and records of that business. **(2)(a)**
- search the premises for records, etc. where necessary. **(2)(b)**

- search a person if that authorised officer has reason to believe that the person has any records which may be required in criminal proceedings in relation to tax. The rights of the person being searched are also listed – the use of these powers is confined to fairly exceptional circumstances. **(2)(c)**

- take copies of the records and to remove them and keep them for a reasonable period. **(2)(d)**

- search the premises for goods that have not been recorded properly in the books, where necessary. **(2)(e)**

- require persons connected with the business or on the premises to give all necessary assistance to that authorised officer in the performance of his/her duties. **(2)(f)**

Nothing in *subsection (2)* interferes with client confidentiality. **(3)**

A trader is obliged, on request, to supply to an authorised officer details of his or her customers and suppliers showing a breakdown of the values of transactions over a specific period. The subsection provides that an officer can request a trader to supply specific records in connection with particular areas of his/her trading operations. Details on gifts and promotional items supplied are also covered – see *section 21* on supplies made free of charge. **(4)**

Obstructing an authorised officer in carrying out his/her duties under this section is prohibited. **(5)**

An authorised officer must identify himself or herself by producing written authorisation at the request of any person concerned when entering a business premises, carrying out a search or requesting documents. **(6)**

Chapter 1A – Special Measures for the protection of the tax

108A. Notice of requirement to furnish certain information, etc.

<u>Summary</u>

This section provides for the service of a notice by the Revenue Commissioners on an accountable person requiring him or her to provide additional information or explanations in respect of his or her taxable supplies during a specified period.

<u>Details</u>

The Revenue Commissioners may serve a notice on an accountable person requiring him or her to provide additional information or explanations in respect of his or her taxable supplies. **(1)**

Certain particulars must be included in the notice e.g. the type of information required, the period for which the notice shall have effect, the period within which the information should be provided to the Revenue Commissioners and the format in which it should be provided. The requirement to provide additional information will apply in respect of supplies made by the accountable person during a period of no more than 2 months. **(2)(a)**

The notice shall contain information that the accountable person is liable to the penalty under *section* 115*(8A)* for failure to comply with the notice. **(2)(b)**

108B. Notice of requirement to issue a document

Summary

This section provides that the Revenue Commissioners may serve a notice, for a specified period, on an accountable person requiring that person to issue a document, which is in the same format as a VAT invoice, in respect of all taxable supplies for which a VAT invoice is not issued.

Details

Subsection (1) provides that the Revenue Commissioners, where they have reasonable grounds to believe it will assist in the prevention and detection of tax evasion, may serve a notice on an accountable person, for a specified period, requiring that person to issue, at the time a supply is made, a document similar to a VAT invoice to each customer to whom a VAT invoice is not issued. The document should contain all of the particulars that would be required on a VAT invoice, including the name and address of the customer. It should also contain a reference to *section 108B* of the VAT Consolidation Act unless *subsection (2)* applies. **(1)**

Subsection (2) provides that the document may be issued as if it were a VAT invoice using a number from a series of numbers used for VAT invoices. Where this occurs, the accountable person must retain a separate record of the numbers relating to documents issued under a *section 108B* notice. **(2)**

Subsection (3) provides that the specified period will commence no earlier than 7 days from the issue of the notice and will not exceed 2 months duration. **(3)**

108C. Joint and several liability for tax

Summary

This section provides that where VAT has been fraudulently evaded, a person who knowingly or recklessly participates in transactions connected to that fraudulent evasion of VAT is jointly and severally liable for the VAT that has not been remitted and Revenue may notify them accordingly.

Details

This section applies to anyone who knowingly or recklessly participates, either as a purchaser or a supplier, in a chain of transactions that is connected to the fraudulent evasion of tax. That person may be held jointly and severally liable for the net amount of VAT due i.e. the amount of VAT that should have been paid in relation to a supply of goods or services or an intra-Community acquisition of goods. A person who is jointly and severally liable under this section will also be liable to pay interest on the outstanding amount of tax but will not be subject to penalties. It is possible that more than one accountable person may be notified that they are jointly and severally liable for the unpaid VAT where they are participants in a chain of transactions involving the same goods or services and where those transactions are linked to the fraudulent evasion of VAT.

Subsection (1) provides for definitions. **(1)**

Subsection (2) provides that where at the time a supply or acquisition is made, a person knows or is reckless as to whether or not that supply or acquisition is connected with the fraudulent evasion of VAT which has not been paid to the Revenue Commissioners by the person who was originally liable, those persons are jointly and severally liable for that VAT. **(2)**

Subsection (3) provides the formula for the calculation of the VAT due. **(3)**

Subsection (4) provides for the notification of the person that he or she is jointly and severally liable for unpaid VAT, the amount for which he or she is liable and with whom he or she is jointly and severally liable. **(4)**

108D. Cancellation of a registration number – special provisions for notification and publication

Summary

This section provides that where a VAT registration number is cancelled and the Revenue Commissioners are concerned about protection of the revenue, they may publish details of the cancelled registration number and notify the person's suppliers of the cancellation of the number.

Details

Paragraphs (a) and (b) provide that section 108D may be used where a VAT registration number is cancelled and the Revenue Commissioners are concerned about protection of the revenue. **(a), (b)**

Paragraph (i) provides that the Revenue Commissioners may notify the suppliers to the person whose registration number has been cancelled about that cancellation. They may provide those suppliers with that cancelled registration number, the date from which it has been cancelled and the name and address of the person to whom those details relate. **(i)**

Paragraph (ii) provides that the Revenue Commissioners may publish the following details in *Iris Oifigiúil:* **(ii)**
- the cancelled registration number,
- the date from which it has been cancelled, and
- the name and address of the person to whom those details relate.

Paragraph (iii) provides that where the Revenue Commissioners have published the information in *Iris Oifigiúil*, they may also publish the same information in other media. **(iii)**

109. Security to be given by certain taxable persons

This section deals with security to be given to Revenue. Revenue may require security from a trader for any VAT that may become due. The form and manner of such security is to be determined by Revenue. Normally it will be in the form of an insurance bond, bank guarantee or similar instrument.

A specific right of appeal to the Appeal Commissioners against any such requirement to provide security is also contained in the section. An appeal may be lodged in accordance with section 949I of the Taxes Consolidation Act 1997 within the period of 30 days after the date of the notice of requirement of security. The security requirement is only used on a selective basis, where it is clear that the particular person or situation involved represents a special risk to the Exchequer.

(Note that there is a separate provision in *section 99* allowing Revenue to obtain security before a VAT refund is given.)

Chapter 2 – Estimation, assessment and time limits

110. Estimation of tax due

<u>Summary</u>

This section enables Revenue to enforce payment of tax against an accountable person who has failed to submit his or her return for any period within the prescribed time after the end of such period. This is done by means of an estimate of the tax due, notice of which is served on the taxpayer. Estimates can be issued for a higher amount where Revenue finds, on the basis of new information becoming available, that the first estimate is insufficient.

The person has a right of appeal against any such estimate on the grounds that he or she is not an accountable person. The appeal must be lodged in accordance with section 949I of the Taxes Consolidation Act 1997 within the period of 30 days after the date of the formal notice of the estimate. Apart from this, a person may displace the estimate by submitting a return and paying the tax due together with interest and any costs.

<u>Details</u>

If an accountable person fails to submit his/her return for any period within the prescribed time limit, Revenue may estimate the amount of tax payable by him/her in respect of that period and may serve notice on him/her setting out the amount so estimated. **(1)**

Subsequent estimates can be issued where the original estimate is either too low or too high provided that Revenue is satisfied that the first estimate is insufficient on the basis of new information becoming available. Second estimates can be raised where the first estimate has issued but a VAT return has not been furnished and information becomes available at a later date that suggests that the original estimate was inaccurate.

The provisions that follow the making of an estimate and the issue of a notice under *subsection (1)* are as follows: **(2)**

- *Paragraph (a)* provides for an appeal, by a person who claims that he/she is not an accountable person, within the period of 30 days after the date of the notice for a determination on whether he or she is an accountable person.

- *Paragraph (b)* provides that if there is no appeal, or if there is an appeal that the appellant loses, the tax shown on the estimate is recoverable in the same manner as if the person had put in a return at the proper time and the return had shown the estimated tax as due.

  Paragraph (c) provides that where a person, after the service of a notice, furnishes a return in respect of the period specified in the notice and pays tax, interest and costs which have been incurred in connection with the default, the notice is discharged and the person may claim a refund of any excess tax which may have been paid on foot of the notice, subject to the 4-year time limit.

Revenue is authorised to include notice of estimates for 2 or more taxable periods on the same form. **(3)**

Regulation 41(1) of the VAT Regulations 2010 deals with estimation.

111. Assessment of tax due

Summary

This section authorises Revenue to review a taxpayer's payments of tax or claims to refund over any period. Where Revenue consider the total amount paid is less than the true liability, or the total refunded is greater than the amount of refund properly due, Revenue may assess the true liability and serve notice on the taxpayer setting out the amount underpaid.

The taxpayer, where he or she is aggrieved by the assessment, has a right of appeal against any such assessment. The appeal must be lodged in accordance with section 949I of the Taxes Consolidation Act 1997 within the period of 30 days of the date of the formal notice of assessment. The amount of the assessment is payable unless it is successfully appealed.

Details

If the amount of tax paid by an accountable person in respect of any period is less than the tax payable (including tax payable under *section 108C*), or where a person has claimed a repayment which is later found to be excessive, or not due at all, Revenue may make an assessment in one sum and serve notice for the amount of the true liability. Also, where a person obtains a refund of VAT in accordance with a refund order made under *section 103* and it subsequently transpires that the VAT was not properly refundable (for example, the item the subject of the refund, was not used for the purpose intended by the order), an assessment may be made and notice served to recover the amount not properly refundable. **(1)**

The following provisions apply following the making of an assessment and the service of a notice under *subsection (1)*: **(2)**

Paragraph (a) gives a taxpayer aggrieved by an assessment a right of appeal in accordance with section 949I of the Taxes Consolidation Act 1997 against the assessment. Notice of appeal must be given within the period of 30 days of the date of the notice of assessment, but there are circumstances in which this period may be extended in accordance with section 949O of the Taxes Consolidation Act 1997.

Paragraph (b) provides that where a notice of assessment is served, an appeal cannot be lodged against the assessment until the return is furnished and the tax paid.

Paragraph (c) provides that in the absence of an appeal the assessment is final and conclusive and the amount of tax due becomes due and payable for the taxable period during which the period of 14 days after the issue of the notice expires.

Paragraph (d) provides that where an appeal is lodged and an amount due is determined, that amount becomes due and payable for the taxable period during which the appeal is determined.

An appellant may be able to avoid further interest being charged on tax due while his/her appeal is being determined, where he or she specifies his/her assessment of the liability and pays this amount. **(3)**

If the amount paid is over 80% of the amount found to be due on determination of the appeal, and the balance (if any) is paid within30 days, then interest will not accrue for the duration of the appeal process.

A final and conclusive assessment is regarded as final and conclusive even where it is amended by Revenue. **(4)**

Regulation 41(2) of the VAT Regulations 2010 deals with assessment.

112. Generation of electronic, etc. estimates and assessments

This section provides that notices served on the taxpayer are deemed to have been made by the inspector or the authorised or nominated officer whose name appears on the notice. This is to copper-fasten the position that estimates and assessments that have not been made *personally* by the inspector or the authorised or nominated officer - because, for example, they have been generated by computer - are valid.

– *Paragraph (a)* deems an estimate made under *section 110* to have been made by the nominated officer. **(a)**

– *Paragraph (b)* deems an assessment made under *section 111* to have been made by the inspector or the authorised officer, as the case may be, to the best of that inspector's or authorised officer's opinion. **(b)**

113. Time limits

Summary

This section prescribes the time limits within which proceedings may be taken for the recovery of penalties for offences in connection with VAT, and also the time limits within which estimates of tax may be made.

In general, proceedings may be instituted within 6 years, and estimates made within 4 years, of the taxable period to which they relate - but there is no time limit on the institution of proceedings for penalties for fraud or negligence on the part of the taxpayer.

Details

An estimate or assessment of tax may be made within 4 years of the taxable period to which it relates. If the estimate or assessment applies to more than one taxable period, it must be made within 4 years of the earliest period. **(1)**

If the estimate or assessment relates to an underpayment of tax due to fraud or neglect on the part of the taxpayer, there is no time limit. **(2)**

"neglect" is defined for the purpose of the provision. Note that a taxpayer will not be deemed to have failed to do anything required by the law/ regulations within a specified time, if he or she meets any extension of the time period allowed by Revenue. Also, if a taxpayer had a reasonable excuse (such as grave illness) for failing to carry out an obligation, no fault is incurred if the necessary action is performed within a reasonable time after the excuse has ceased to apply

Provisions in relation to the making of estimates or assessments of tax due by a deceased person are also contained in the section. Broadly speaking, the estimate or assessment must not be made more than 3 years after the year of death: **(3)**

- Where probate, etc. is granted in the year of death, the estimate/assessment must be made within the next 3 years;
- Where probate, etc. is granted in other cases (viz. later than the year of death), the estimate/assessment must be made within the next 2 years.

However, where the personal representative delivers an additional affidavit after the year of death, or was liable to deliver such an affidavit in the year of death, the estimate/assessment may be made within the next 2 years after it is delivered. (It is still possible that corrective affidavits for the purposes of estate duty may be lodged; these are also covered by the provision.)

A general 6-year limit is laid down for proceedings in relation to recovery of penalties. **(4)**

Chapter 3 - Interest and penalties

114. Interest payable by accountable persons

Summary

This section provides for the charging of simple interest on a daily basis where tax due is not paid and where a VAT refund is over-claimed. The rate is 0.0274% per day.

Details

Simple interest is charged on a daily basis where any amount of tax becomes payable by an accountable person but is not paid. The simple interest will be calculated from the date on which the amount becomes payable. **(1)**

Simple interest is charged on a daily basis in cases where a VAT refund has been made, but either— **(2)**

- No amount of tax was properly refundable, or
- The amount of tax refunded was greater than the amount that was properly refundable.

Simple interest will be charged at a rate of 0.0274% per day, or part of a day, during which the amount remains unpaid.

A legislative basis exists for charging simple interest on any balance of VAT that remains unpaid following the making of VAT payments under the direct debit scheme (*section 77(2)*). Where more than 20% of the accountable person's actual liability for that accounting period has been underpaid, interest will be chargeable on the balance outstanding. **(3)**

For the purposes of calculating and charging interest, the balance will be deemed to have been payable on a day which is 6 months prior to the final day for making a return under *section 77(2)(b)*.

Interest is also charged on arrears of tax that have been established by means of either estimates or assessments made under *sections 110 and 111*. In both cases, interest is calculated from the date on which the amount becomes payable and is chargeable at a daily rate of 0.0274% for the time during which the amount remains unpaid. **(4)**

- *Paragraph (a)* provides that tax recoverable by means of an estimate issued under *section 110* is regarded as falling due for the taxable period to which the notice of the estimate relates.
- *Paragraph (b)* provides that tax recoverable by means of an assessment issued under *section 111* is regarded as falling due for the taxable period (or later/latest taxable periods if there is more than one) to which the notice of the assessment relates. This applies irrespective of whether a notice of appeal under the section has been received.

114A. Interest payable in certain circumstances

Summary

This section provides for interest payable by persons who are not accountable persons.

Details

Subsection (1) provides that where a person obtains a refund of VAT under an order under *section* 103 and where that VAT was not properly refundable, the person will be liable to interest on the amount refunded from the date the refund was made. The rate of interest is 0.0274% per day. **(1)**

Subsection (2) provides that where an assessment is raised to recover an amount refunded under a refund order interest will apply from the period to which the assessment relates. **(2)**

115. Penalties generally

Summary

This section provides penalties for failure to comply with specific requirements as set out in the Act or regulations. Examples of such requirements are the obligation to furnish the particulars for registration or the obligation to keep proper records. The section also provides for penalties on an unregistered person who issues an invoice showing tax or the flat-rate addition in circumstances where tax or the flat-rate addition does not apply. If the person who incurs the penalty is a body of persons such as a company or society, the secretary is also liable to a separate penalty.

Details

Subsection (1) sets out various sections of the Act that contain requirements in relation to the breach of which a penalty of €4,000 is prescribed. It should be noted that a person who is liable for VAT, only as a result of being jointly and severally liable under *section* 108C, is not liable to pay any penalty in respect of that unpaid VAT. **(1)**

A penalty of €4,000 is also prescribed in each of the following cases:

- An unregistered person who issues an invoice showing tax. **(2)**

- The issue of a flat-rate invoice by a person other than a flat-rate farmer. **(3)**

- The issue of an invoice, settlement voucher or other document showing the flat-rate addition in respect of goods / services specified in an order made under *section 86A*. **(3A)**

- Where the person who incurs the penalty under *subsections (1), (2) or (3)* is a body of persons, the secretary will be liable for a separate penalty of €4,000. **(4)**

- For wilfully obstructing an authorised officer of Revenue in exercising his/her functions in regard to VAT. **(5)**

- For obstructing an authorised officer of Revenue in relation to valuing or inspecting a property. **(6)**

- A person who supplies goods or services in contravention of the security requirement specified in *section 109* is liable to a penalty of €4,000 in respect of each such supply. **(7)**

- A penalty of €4,000 applies for the taxable period where a business, which had qualified under the zero-rating scheme for “export businesses”, fails to notify the Revenue Commissioners that it no longer qualifies. **(7A)**

- A further penalty of €4,000 applies for each subsequent taxable period in which the business does not so qualify and has failed to notify the Revenue Commissioners accordingly.

- A person who does not comply with a requirement specified in an order under *section 103* is liable to a penalty of €4,000. **(7B)**

- For failure to furnish records relating to transactions in the transitional period under the special schemes for means of transport and agricultural machinery - see *section 124(7)(b).* **(8)**

- A person who does not comply with a notice to furnish certain information, issued under *section 108A*, is liable to a penalty of €4,000. **(8A)**

- A person who does not comply with a notice issued under *section 108B*, is liable to a penalty of €4,000. **(8B)**

In proceedings for recovery of penalties, certificates signed by Revenue officers in relation to **(9)**

- the non-furnishing of returns by defendants,
- the sending of documents to defendants,
- the non-issuing of Revenue notices to defendants, and
- the status of a defendant as an accountable person,

are evidence until the contrary is proved.

116. Penalty for deliberately or carelessly making incorrect returns, etc.

Summary

This section prescribes penalties in regard to deliberately or carelessly furnishing incorrect returns and the use of false invoices or other false documents in connection with the tax. The amount of the penalty is reduced where the person liable co-operates fully with any Revenue investigation. Where a penalty is incurred by a body of persons such as a company or society, the secretary is liable to a separate penalty. Penalties are also prescribed for a person who avoids tax on importation of goods. The section also provides for the forfeiture of goods in certain circumstances.

Details

Definitions are provided for the purposes of the section. **(1)**

A person, who is liable for VAT, only as a result of being jointly and severally liable under *section* *108C*, is not liable to pay any penalty in respect of that unpaid VAT. **(1A)**

A person is liable to a penalty where he or she deliberately furnishes an incorrect return or makes an incorrect claim or declaration. **(2)**

A person is liable to a penalty where he or she deliberately fails to furnish a return. **(3)**

The penalty incurred for deliberately furnishing an incorrect return is set out in *subsection (11)* and the penalty incurred for deliberately failing to furnish a return is set out in *subsection (12).* A reduction in these penalties is provided for where the person who is liable cooperated fully with any investigation or inquiry conducted by Revenue. **(4)**

A person is liable to a penalty where he or she, carelessly but not deliberately, furnishes an incorrect return or makes an incorrect claim or declaration **(5)**

A person is liable to a penalty where he or she, carelessly but not deliberately, fails to furnish a return. **(6)**

The penalty incurred under *subsection (5)* is set out in *subsection (11)* and the penalty incurred under *subsection (6)* is set out in *subsection (12).* It also provides for a reduction in these penalties where the person liable co-operated fully with any investigation or inquiry conducted by Revenue. **(7)**

Prescribed penalties of €3,000 apply where a person carelessly, and of €5,000 apply where a person deliberately, produces, furnishes, gives, sends or otherwise makes use of, any incorrect invoice, registration number, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information book, document or record. **(8)**

Where a person, neither deliberately nor carelessly, furnishes an incorrect return and subsequently discovers the error, then, unless the error is corrected without unreasonable delay, that return is treated as having been deliberately made or submitted by that person. **(9)**

The time limits set out in *section 113* do not apply to proceedings for the recovery of any penalty under this section. **(10)**

The amount of the penalty incurred under *subsections (2) and (5)* is the difference between the tax paid or claimed on the basis of the incorrect return, claim or declaration furnished and the amount of tax properly payable or refundable. **(11)**

The amount of the penalty incurred under *subsections (3) and (6)* is the difference between the tax paid before the start of any inquiry or investigation by Revenue and the amount of tax properly payable. **(12)**

A reduction in the penalties incurred under *subsections (4) and (5)* is provided for where a second qualifying disclosure is made by a person within 5 years of such person’s first qualifying disclosure. **(13)**

The penalties incurred under *subsections (2), (3) and (5)* cannot be reduced where a third or subsequent qualifying disclosure is made by a person within 5 years of such person’s second qualifying disclosure **(14)**

A disclosure is not a qualifying disclosure in circumstances where Revenue have already started an inquiry or investigation into any matter contained in that disclosure or the matters contained in that disclosure are already known to the Revenue **(15)**

With effect from 1 May 2017, a disclosure is not a qualifying disclosure in circumstances where **(15A)**

- the disclosure relates directly or indirectly to offshore tax defaults
- the disclosure relates to any other tax default in circumstances where the person has, before the date of the disclosure, certain offshore matters that are known or become known to Revenue and which are matters occasioning a liability to tax that gives rise to a penalty.

Any return, claim or declaration submitted on behalf of a person is deemed to have been submitted by the person, unless that person proves that it was submitted without his or her consent or knowledge. **(16)**

If the person incurring penalties under *subsection (2), (3), (5) or (6)* is a body of persons – for example, a company – there is a separate penalty of €1,500 (€3,000 in the case of deliberate behaviour) on the secretary of the body. **(17)**

A penalty of €4,000 is prescribed where a person improperly procures the importation of goods without payment of tax in circumstances where tax is chargeable. The person must also pay to Revenue the amount of tax that should have been paid on the importation of the goods. **(18)**

A penalty of €4,000 is prescribed where a person uses an invalid VAT registration number to acquire goods from another Member State at the zero rate of VAT. The person must also pay to Revenue the amount of tax that should have been paid on the acquisition. **(19)**

Where tax on the supply of goods has been remitted or repaid on the basis that the goods have been or are to be exported and those goods are later found in the country, the goods will be liable to forfeiture and the person to whom the goods were supplied will be liable for the tax which was remitted or repaid. **(20)**

The forfeiture of goods is provided for in the following cases: **(21)**

– zero–rated intra-Community supplies where the goods were not dispatched or transported outside the State;

– zero–rated intra-Community acquisitions due to the use of an incorrect registration number;

– the intra-Community acquisitions of new means of transport which are purchased in another Member State without payment of VAT on the basis that they are liable to VAT in the State, but are then not declared as new means of transport liable to VAT in the State;

– supplies by an accountable person who has not applied to be registered for VAT.

The provisions of the Customs Acts relating to forfeiture and condemnation of goods apply to goods liable to forfeiture under *subsections (20) or (21)*. **(22)**

A Revenue officer authorised under this subsection or a member of the Garda Síochána can make an arrest where there are reasonable grounds for suspecting that a criminal offence has been committed in relation to tax by a person who is not established in the State or by a person who is likely to leave the State. **(23)**

117. Penalty for assisting in making incorrect returns

This section prescribes a penalty of €4,000 for a person who induces or assists in the making or submitting of any return or document for tax purposes, which he/she knows to be incorrect.

118. Mitigation and application of penalties[3]

[3] Repealed by s78 Finance (No.2) Act 2013 (w.e.f. 18 December '13)

Chapter 4 – Appeals and regulations

119. Appeals

Summary

A new appeals process came into operation on 21 March 2016, by way of Commencement Order, with the enactment of The Finance (Tax Appeals) Act 2015 (please see Tax and Duty Appeals Manual). The appeal provisions are now contained in Part 40A of the Taxes Consolidation Act 1997.

This section provides for appeals, in accordance with section 949I of the Taxes Consolidation Act 1997, in relation to a number of provisions in the Act, including appeals against

- group registration,
- certain determinations made by Revenue and
- claims for repayment.

Any question of fact or law may be brought before the Appeal Commissioners.

Transitional rules
Under the old appeals process, an appellant who was dissatisfied with a determination of the Appeal Commissioners could request a full rehearing of the appeal by a Circuit Court Judge (CCJ). This CCJ rehearing will not be available under the new appeals process. However, the right to such a rehearing will be retained by those appellants whose hearing before the Appeal Commissioners had begun or had been completed before 21 March 2016. Where such a hearing has not begun, an appellant will be restricted to an appeal to the High Court on a point of law.

Because EU law governs VAT, any of the courts may refer the case to the European Court of Justice.

Details

Subsection (1) lists certain specific matters which may be made the subject matter of appeal that are not otherwise provided for in the Act. These include: **(1)**

– compulsory group registration, refusal to allow group registration and the cancelling of an existing group registration, **(1)(a)**

- the treatment of a person who allows supplies to be made on land owned, occupied or controlled by that person, as jointly and severally liable with another person in accordance with *section 17(1)*, **(1)(b)**

- a determination made under *section 18(1)* in relation to certain sports and leisure facilities or under *section 38* in respect of the open market value of a supply of goods or services, **(1)(c)**

- the refusal by Revenue to authorise a person to operate as a refunding agent for the VAT retail export scheme, **(1)(d)**

- a charge of tax in connection with the issue of an incorrect invoice or an issue of an invoice showing tax by a non-registered person, **(1)(e)**

- the refusal by Revenue to approve a refund application under *section 101* (intra-Community refunds), **(1)(f)**

- a charge of tax in accordance with regulations, **(1)(g)**

- a claim for repayment. **(1)(h)**

An appeal on any of these matters must be made in writing to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act 1997 within the period of 30 days after the date of the relevant notification.

There is also a right of appeal against a refusal by Revenue to treat a person as an accountable person for VAT purposes. **(2)**

In the context of an appeal against a refusal by Revenue to make a refund under *section 101(9)*, a failure by Revenue to make a decision within the time limits given in that section is also treated as a refusal. **(3)**

120. Regulations

Summary

This section gives power to Revenue to make regulations for the administration of the tax. The matters to be dealt with by regulation include registration, collection, recovery, refunds and remissions, the disclosure of information for the ascertainment of liability, the keeping of accounts and records, the information to be given on invoices and related documents, and other matters incidental to the care and management of the tax.

Details

The Revenue Commissioners have a general power to enable them to make regulations to discharge their functions. Specific issues that may be covered by regulations are listed in *subsections (2) to (16)*. **(1)**

Regulations on accountable persons (*Part 2*) may cover elections, cancellations (including tax clawback) as well as treating a person as not accountable. **(2)**

Regulations on taxable transactions (*Part 3*) may cover self-supply of services for business purposes. **(3)**

Regulations on place of taxable transactions (*Part 4*) may cover elections to register under the distance sales rules for persons below the threshold levels. **(4)**

Regulations on taxable amount (*Part 5*) may cover adjusting tax liability when goods are returned, the price is cut, a bad debt occurs or a discount is allowed. They may also cover making determinations and non-business use of business assets. **(5)**

Regulations on rates and exemption (*Part 6*) may cover apportionment for composite and multiple supplies, categorisation of such supplies as composite, ancillary, etc., de minimis amounts not counted in applying the composite/multiple rules and determinations on tax rates. **(6)**

Regulations on imports, exports, etc. (*Part 7*) may cover repayment of import VAT. They may also cover relieving classes of registered persons (defined in the regulation) from the obligation to pay tax at importation and providing that the tax be accounted for in the return for the period in question. **(7)**

Regulations on deductions (*Part 8*) may cover deductions for intra-Community acquisitions, deductions for residual tax in connection with transfer of business to another Member State, deductions for qualifying vehicles, the operation of the capital goods scheme, apportionments (and adjustments to apportionments), adjustments in relation to unpaid consideration and relief for stock-in-trade held when a person first becomes accountable. **(8)**

Regulations on accountable persons' obligations (*Part 9*) may cover registrations for VAT, invoices and other documents, evidence of business controls with regard to invoicing, returns and tax payable, etc. for new means of transport other than motor vehicles. They may also cover matters relating to the moneys received basis of accounting, VIES statements for intra-Community supplies of goods, and records (including records on investment gold). **(9)**

Regulations on special schemes (*Part 10*) may cover the margin schemes for taxable dealers (including aggregate margin calculations), travel agents and auctioneers. They may also cover the special schemes for investment gold and for telecommunications services, radio or television broadcasting services and electronically supplied services under the non-Union scheme or the Union scheme. **(10)**

Regulations on immovable goods (*Part 11*) may cover waivers, valuation of interests and specification of circumstances where development is not treated as being to the benefit of a person. **(11)**

Regulations on refunds (*Part 12*) may cover the general entitlement to refund of excess tax paid, repayments of residual tax in relation to new means of transport dispatched to another Member State and interest payments. **(12)**

Regulations on administration and general issues (*Part 13*) may cover the nomination of officers, recovery of tax, disclosure, remission of tax, death of registered persons and the serving of notices. **(13)**

Regulations on *Schedule 1* (exempt activities) may cover education and vocational training (*paragraph 4(3))*. **(13A)**

Regulations on *Schedule 2* (zero-rated goods and services) may cover imports (*paragraph 2(1)*), the determination of children's sizes (*paragraphs 10(1) and 10(2)*), matters relating to exports and international trade (*paragraph 3(1) and 7(3)*) and intra-Community transactions (paragraph 1(1)). **(14)**

Regulations on *Schedule 3* or *Schedule 5* may cover short-term lettings of holiday homes (*paragraph 11* of Schedule 3) or matters relating to antiques (*paragraph 24* of Schedule 3 or *paragraph 3* of Schedule 5). **(15)**

Differentiation is provided for in so far as procedures are concerned. This means that the regulations may differentiate between the various classes of activities in respect of which tax is chargeable. **(16)**

Regulations under certain specified sections will not be made without the consent of the Minister. These cover: **(17)**

- Modifications to Customs laws (*section 53(3)*)
- Remitting or repaying tax chargeable on goods to be exported or services related thereto (*section 57*)
- Remitting or repaying tax chargeable on goods shipped on boats/planes to a place outside the State, or on goods used in commercial sea-fishing (*section 104(4)*)
- Remitting or repaying tax chargeable on services related to the preceding item (*section 104(5)*)
- Tax on imports (*subsection (7)(b) and (c))*
- Average build, foot size for children (*subsection (14)(d) or (e)*)
- Short-term lettings (subsection *(15)(a)*).

Revenue may also make regulations containing such incidental, supplementary and consequential provisions as are necessary to give full effect to Council Directive No. 86/560/EEC of 17 November 1986 (the 13th VAT Directive), the VAT Directive and Council Directive No. 2008/9/EC of 12 February 2008. **(18)**

Regulations must be laid before Dáil Éireann as soon as they are made. **(19)**

PART 14 – REPEALS, CONSEQUENTIAL AMENDMENTS, TRANSITIONAL MEASURES AND COMMENCEMENT

Overview

This Part, which contains 4 sections, covers the repeals and transitional measures needed to bring the Consolidation Act into effect.

121. Definition of "repealed enactments"

This section provides that "repealed enactment" means the Value-Added Tax Act 1972, which is repealed by *section 122*.

122. Repeal of the Value-Added Tax Act 1972, etc.

<u>Summary</u>

This section repeals the 1972 VAT Act and provides for continuity provisions.

<u>Details</u>

Subsection (1) repeals the 1972 VAT Act. This is subject to *subsection (2)*. **(1)**

The new Act does not apply in relation to taxable periods ending before 1 November 2010; the pre-consolidation legislation applies in such cases. **(2)**

The provisions of the repealed VAT Act 1972 which impose a fine, forfeiture, penalty or punishment in respect of an offence continue in force in so far as they are concerned with an offence that was committed or began before the date of passing of the VAT Consolidation Act 2010. **(3)**

Anything done under the provisions of the repealed enactments that corresponds with the provisions of the VAT Consolidation Act 2010 are deemed to have been done under the corresponding provision of VAT Consolidation Act 2010 – this doesn't affect the operation of the transitional rules in *section 124*. **(4)**

123. Consequential amendments, repeals and revocations

This section provides for consequential amendments to other enactments, which are set out in *Schedule 7*. The section also provides for repeals and revocations to legislation that is made unnecessary, obsolete, etc. by the VAT Consolidation Act 2010 – these are set out in *Schedule 8*.

124. Transitional provisions

This section provides for the continuity of the operation of the law between the old and the new legislation.

The Revenue Commissioners have all the powers and duties in relation to value-added tax under the VAT Consolidation Act 2010 that they had before its enactment. **(1)**

The continuity of the law relating to value-added tax is not affected by the substitution of the VAT Consolidation Act 2010 for the repealed enactment. **(2)**

Any reference in any document or enactment to a provision of the VAT Consolidation Act 2010 is to be construed (where necessary) as a reference to the corresponding provision in the relevant legislation before consolidation. **(3)**

Any reference in any document or enactment to a provision before consolidation (that is, a reference to the 1972 Act or things done under it) is to be construed (where necessary) as a reference to the corresponding provision in the VAT Consolidation Act 2010. **(4)**

All instruments, documents, determinations, authorisations and letters or notices of appointment made or issued under the repealed enactment and in force immediately before the commencement of the VAT Consolidation Act 2010 continue in force as if they were done under the VAT Consolidation Act 2010. **(5)**

Subsection (6) contains transitional provisions in relation to determinations made by Revenue in relation to public bodies. A provision that allowed Revenue to make determinations that particular supplies of the State and local authorities were taxable in cases of distortion of competition was repealed with effect from 8 March 2010. This subsection provides that determinations made by Revenue under the distortion of competition rules before 8 March 2010 are not affected by the repeal of the enabling provision in respect of such bodies from that date. **(6)**

Subsection (7) contains transitional provisions in relation to additional records to be kept by taxable dealers under the special scheme for means of transport and the special scheme for agricultural machinery. Both of these schemes were phased out in 2010 and the transport and machinery in question was brought into the margin scheme. (See *section 87*). The additional records relate to the transitional measures in place during the changeover. Copies of the information must be made available to Revenue on request, within 21 days of the notice. **(7)**

125. Commencement

The Act is deemed to come into force and apply for taxable periods commencing on or after 1 November 2010.

SCHEDULES

Overview

There are 8 Schedules to the Act, as follows:

Schedule 1 – Exempt activities

This Schedule lists activities that are exempt from VAT. Section 2(1) defines exempted activities as certain supplies of property and supplies of goods and services listed in this Schedule. There are 2 Parts, as follows:

- Part 1 – Activities in the public interest
- Part 2 – Other exempted activities

Schedule 2 – Zero-rated goods and services

This Schedule lists supplies that are taxable at 0%. There are 2 Parts, as follows:

- Part 1 – International supplies
- Part 2 – Supplies within the State

Schedule 3 – Goods and services chargeable at the reduced rate

This Schedule lists goods and services that are chargeable at either the 9% rate or the 13.5% rate of VAT. The Schedule is divided into 6 Parts, as follows:

- Part 1 – Interpretation
- Part 2 – Annex III supplies

  Paragraphs 7(a), 7A and 12 – second reduced rate 9%

  Paragraphs 3(1) to (3), 3(5), 4, 5, 6, 7(b), (c), (d) and (e), 8, 9, 10, 11 and 13 – reduced rate 13.5%

- Part 2A – Article 102

  Paragraph 13A – reduced rate 13.5%

- Part 2B – Article 113

  Paragraph 13B – reduced rate 13.5%

- Part 3 – Article 115

  Paragraph 14 – reduced rate 13.5%

- Part 4 – Article 118

  Paragraphs 15 to 21 – reduced rate 13.5%

- Part 5 – Article 122

  Paragraph 22 – reduced rate 13.5% (live plants, etc.)

- Part 6 – Article 311

  Paragraphs 23 to 25 – reduced rate 13.5% (art, etc.)

Schedule 4 – Agricultural production activities and services

The activities listed in this Schedule come from Annex VII and Annex VIII of the VAT Directive. Article 295(1) of the VAT Directive refers. The definition of farmer relates to engagement in these activities – see *section 4(1)* for details.

Schedule 5 – Works of art, collectors' items and antiques

The items listed in this Schedule are chargeable at the rate specified in *section 46(1)(c)* (in other words, the reduced rate of 13.5%) when they are supplied in the circumstances specified in *section 48* (Works of art, etc.).

See Article 311(1) to (4) and Annex IX of the VAT Directive.

Schedule 6 – Activities listed in Annex 1 of the VAT Directive

The activities listed in this Schedule are within the scope of VAT when undertaken by the State or public bodies. See *section 14* for details.

Schedule 7 – Consequential amendments

This Schedule substitutes references to the Value-Added Tax Consolidation Act 2010 for references to the Value Added Tax Act 1972, or to sections dealing with value-added tax in other legislation – such as Finance Acts, the Taxes Consolidation Act 1997 and other primary and secondary legislation.

Schedule 8 – Repeals and Revocations

This Schedule lists primary and secondary legislation that is repealed or revoked as a result of the enactment of the VAT Consolidation Act 2010. This is mainly comprised of annual Finance Act provisions over the years, which inserted text into the 1972 VAT Act.