

## VAT treatment of Admission fees for entry to Historic Houses and Gardens and certain other admissions to, and rights over, property.

This document should be read in conjunction with section 34 of the VAT Consolidation Act 2010 (VATCA 2010)

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## 1. General

Fees charged for entry to Historic Houses, Stately Homes, and Gardens (hereafter collectively referred to as Historic Houses) were treated as exempt from VAT as constituting a letting of immovable goods under Par. 11 (1) of Schedule 1 to the VAT Consolidation Act 2010. This treatment applies to stately homes and historic houses with or without gardens, or where there is access to the gardens only but no access to a house. It arose from an old determination of the Appeal Commissioner where it was decided, in a particular case, that the right granted to a person to enter a house and gardens was, for VAT purposes, an exempt letting of property.

## 2. Decisions of the European Court of Justice (ECJ)

Several decisions of the European Court of Justice (ECJ), which interprets VAT law, have called into question this VAT exemption, which is also applied to a number of other services (see Other Services). Some of the principal ECJ cases are:

- Case C-284/03 (Belgian State v Temco Europe S.A.)
- Case C-428/02 (Fonden Marselisborg Lystbadehavn v Skatteministeriet)
- Case C-275/01 (Sinclair Collis Ltd v Commissioners of Customs and Excise)

The ECJ, in defining what constitutes a letting for VAT purposes, has set down three key criteria that are described below.

## 3. The letting is for an agreed period

The ECJ in Temco admitted that it had previously stressed the importance of the period of the letting but had done so in order to distinguish a transaction comprising the letting of immovable property, from other activities which are either industrial or commercial in nature. The ECJ views the letting of immovable property, a relatively passive activity linked simply to the passage of time and not generating any significant added value, as different from other activities which are either industrial and commercial in nature, such as the exceptions referred to in Article 13 B (b)(1) to (4)\* of the Sixth Directive, or have as their subject-matter something which is best understood as the provision of a service rather than simply the making available of property. Examples of such other activities include the right to use a golf course (Stockholm Lindöpark,) the right to use a bridge in consideration of payment of a toll (Commission v Ireland) and the right to install cigarette machines in commercial premises (Sinclair Collis).

\* Now Article 135 ( 2 ) first subparagraph ,points (a) to (d) of the Recast VAT Directive 2006/112/EC

#### **4. The right of possession of the property by the tenant**

The ECJ considered the right of possession in *Sinclair Collis*. Here the owner of premises granted to the owner of cigarette vending machines the right to install operate and maintain machines for a period of two years in a place nominated by the owner of the premises. In return the owner of the premises received a percentage of the gross profits on the sales of cigarettes and other tobacco goods dispensed from the machines. The agreement between the premises owner and the owner of the cigarette vending machine gave no rights of possession or control to the machine owner other than those expressly set out in the agreement. The ECJ concluded that the agreement between the parties did not amount to a letting of immovable property benefiting from the exemption in Article 13 (B) (b) Sixth VAT Directive, now Article 135 (1) (l) of the Recast VAT Directive 2006/112/EC.

#### **5. The Right of the tenant to exclude others from the property**

The ECJ concluded in *FML (Fonden Marselisborg Lystbadehavn)* case that FML could regard as lettings both its land sites and its mooring berths. FML's relationship with the users of the land sites was such that they had exclusive use of the sites assigned to them for a fixed period and FML's relationship with its users of water-based mooring berths was that FML could let a mooring berth, that was the subject of a letting to a lessee, when the lessee was not using it for his own use. The ECJ concluded that these temporary lettings did not alter the letting relationship between the lessee and the lessor.

#### **6. Future VAT Treatment**

(See also "Effective Date of Application of Change").

The VAT Directive 2006 does not set out a definition of what constitutes a letting, for the purposes of VAT exemption. While the matter is not completely free from doubt Revenue, having regard to the principles established in the ECJ cases and in particular the courts decision as to what constituted a letting set out in the *Temco* case, have decided to apply a revised VAT treatment to admissions to Historic Houses on the grounds that what is involved is not a passive letting within the meaning of Article 135 (l) of the 2006 VAT Directive or Schedule 1, Part 2, Paragraph 11 (1), VAT Consolidation Act 2010.

In future the admission fees to Historic Houses, and fees for certain other services (see Other Services), will be subject to VAT on the grounds that they are not exempt lettings of immovable goods and require to be categorised as taxable services.

## 7. Other services

There are also a number of other services where VAT exemption was applied in the past on the grounds that the supplies constituted the letting of immovable property. These include the following;

- Admissions to open farms
- Letting of space in a public house for the purpose of playing cards
- The placing of snooker tables, amusement machines, and other means of playing indoor sports and the placing of cigarette machines in a public house or other public place
- Certain rights granted over land and property e.g. Turf Cutting rights.

Supplies of the services listed above, and similar services, will no longer benefit from the lettings exemption and will become liable to VAT where not already liable. If you supply a service similar to the above and are in doubt as to the correct VAT treatment please contact your local tax office.

## 8. Rate of VAT applicable

It is accepted that in many cases people visit Historic Houses both to view the house itself and also to see its contents. The rate of VAT applicable to the admissions will be the reduced rate where the circumstances are those described in Paragraph 8 (4) of Schedule 3, Value Added Tax Consolidation Act 2010. That provision reads as follows;

Admissions to exhibitions of the kind normally held in museums and art galleries, of objects of historical, cultural, artistic or scientific interest, not being services of the kind specified in Paragraph 3 (5) of Schedule 1.

A second reduced rate of VAT introduced in respect of certain goods and services (mainly related to tourism) for the period 1 July 2011 to the 31st December 2013 has been extended indefinitely. Therefore, this second reduced rate applies from 1 January 2012, to the admissions referred to above until further notice.

The standard rate of VAT will apply in all other cases including the provision of other services referred to in "Other Services"

## 9. Effective date of application of change

The amended VAT treatment will apply with effect from 1 January 2012. This will give a lead - in time to the industry to prepare for the change, adjust prices, and print amended brochures etc. Services that have already been correctly categorised for VAT purposes are not covered by the deferred date.



## 10. Other activities

Many operators of historic houses who carry on other activities, such as restaurants, coffee shops, craft shops, gift shops etc are currently registered and accounting for VAT in respect of those activities and that position will not change.

## 11. Exemption as a cultural body

Admissions to Historic Houses may qualify for exemption, under Paragraph 5 Schedule 1 VAT Consolidation Act 2010.

This Paragraph provides for exemption to apply in the case of the supply of cultural services and the supply of goods closely linked to those services, by a public body or any cultural body, (whether established by or under an enactment or not) that is recognised as such a body by the Revenue Commissioners for the purposes of Paragraph 5 excluding the promotion of or admission to live theatrical performances.

For the purposes of this provision a cultural body is one who operates as a non-profit making entity, charges similar price as commercial enterprises, and in benefiting from the exemption does not distort competition to the disadvantage of those enterprises. Cultural services are those related to history, literature, or the visual or aural arts and should be representative or indicative of the. culture of a regional or ethnic group, or of an era.

The exemption only applies to the supply of cultural services by the cultural body. The supply of services, other than cultural services, by a cultural body does not come within the scope of the exemption.

Applications for exemption by a cultural body are considered by Revenue on a case-by-case basis.

## 12. Registration for VAT

Persons supplying taxable services must register for VAT if their turnover from those services exceeds an annual threshold of €37,500. Such persons are not obliged to register for VAT if their turnover is below that threshold but may do so if they wish. Please see Revenue's information on VAT registration.

## 13. Input Credit

An accountable person may deduct the VAT charged on most goods and services which are used for the purposes of his or her taxable supplies in computing the amount of tax payable in respect of a taxable period. No deduction may be made for the VAT on goods and services used for any activity that is exempt from VAT.

In the case of dual use inputs, goods and services that are not used solely for the purposes of either taxable supplies or activities or exempt supplies or activities, the VAT involved must be apportioned between the deductible supplies/activities and the non-deductible supplies/activities. The apportionment method used must reflect the extent to which the dual use inputs are used for the purposes of the persons deductible supplies / activities and have due regard to the range of that persons total supplies and activities.

As referred to in "Effective Date of Application of Change", entrance fees to historic Houses and the provision of other services referred to in "Other Services" will not be liable to VAT until after 1 January 2012. Consequently input credit for VAT incurred on goods and services that relates to the entrance fees and other services will not be deductible for periods prior to that date.

#### **14. Records**

A VAT registered person must keep records of all business transactions, which affect or may affect his or her liability to VAT and entitlement to deductibility. The records must be kept up to date and must be sufficiently detailed to enable the person to accurately calculate liability or repayment for each taxable period and also to enable Revenue to verify the accuracy of the records, if necessary.