

## Transfer of Business

This document should be read in conjunction with sections 20(2)(c) and 26 of the VAT Consolidation Act 2010.

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## Introduction

This guidance sets out the VAT treatment of business assets disposed of by way of a transfer of a business. It should be noted, in relation to the examples provided in this manual that;

- the range of examples provided is not exhaustive, and that
- unless specifically stated otherwise, the purchaser in each of the examples provided is an accountable person.

These provisions, generally referred to as Transfer of Business relief (TOB), are aimed at reducing compliance costs for traders. The intention of the relief is to remove from the transferee the requirement to pay VAT on the acquisition of assets to which the relief applies, where he or she would have had an entitlement to deduct some or all of the VAT payable. The legislation provides that where assets are transferred in circumstances where TOB provisions apply it is deemed that no supply has taken place for the purposes of VAT.

Where the circumstances surrounding a transfer of assets are such that TOB provisions apply and VAT is not therefore chargeable on the transfer of those assets, the application of the provisions is mandatory. Traders are advised that when they acquire assets in circumstances where TOB provisions might apply they should, in cases of doubt, check with their local Revenue District before paying any VAT invoiced by the vendor in respect of such assets. Where a transfer of assets falls within TOB provisions, it is important to note that any VAT paid by a purchaser to a vendor in respect of that transfer will not be deductible as the transfer is deemed not to be a supply for VAT purposes.

This guidance applies to assets transferred on or after the date of publication, but where assets transferred on or after that date were subject to binding contractual arrangements put in place prior to that date, previous guidance will apply.

### 1 Legislative basis for TOB

Section 20(2)(c) of the Value-Added Tax Consolidation Act 2010 (VATCA 2010) provides that a transfer of ownership of goods, being the transfer to an accountable person of a totality of the assets or part thereof of a business, even if that business or part thereof had ceased trading, where those transferred assets constitute an undertaking or part of an undertaking capable of being operated on an independent basis, is deemed not to be a supply for VAT purposes.

Section 26 of the VATCA 2010 provides that the transfer of goodwill or other intangible assets of a business, in connection with the transfer of the business or part thereof, or in connection with the transfer of ownership of goods that qualify for relief under section 20(2)(c), is deemed not to be a supply for VAT purposes when the transfer is between an accountable person and a taxable person who carries on a business in the State or between a person who is not an accountable person and another person.

The provisions of section 20(2)(c) and 26 are based on the provisions found in Articles 19 and 29, respectively, of Council directive 2006/112/EC.

It should be noted that:

- The definitions of accountable person and taxable person are set out in section 2(1) of the VATCA 2010. For the purposes of section 26 of the VATCA 2010 the term accountable person does not include a person registered for VAT only for the purposes of accounting for intra-Community acquisitions or services received from outside the State.
- Where a person acquiring a business, or part of a business, is an accountable person the transferor shall apply the transfer of business provisions notwithstanding that the transferee has not at the time of transfer received a VAT registration number.

## 2 Scope of TOB relief

In the context of the Transfer of Business provisions the VAT law refers to the transfer of a totality of the assets, or part thereof, of a business. The Court of Justice of the EU has provided guidance as to what constitutes “a totality of assets, or part thereof” as follows:

The concept of a transfer of a totality of assets **“must normally be given an autonomous and uniform interpretation throughout the Community;”** [Zita Modes, paragraph 34, Case C-497/01].

**“Having regard to this purpose, the concept of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof must be interpreted as meaning that it covers the transfer of a business or an independent part of an undertaking including tangible elements and, as the case may be, intangible elements which, together, constitute an undertaking or a part of an undertaking capable of carrying on an independent economic activity, but that it does not cover the simple transfer of assets, such as the sale of a stock of products.”** (Zita Modes, paragraph 40).

The components of a business can typically include the following:

- premises
- employees
- plant and machinery
- stock
- goodwill
- intellectual property
- debtors.

The absence of one or more of these components from the assets being transferred will not automatically preclude the application of TOB relief to the transfer as, for example, there may be no plant, machinery or stock where the business is a service business. The relief does not cover the simple transfer of assets and whether assets being transferred consist of a “totality of assets” or “part” of a totality of assets, the transferred assets must together constitute a business undertaking capable of being operated on an independent basis.

## 2.1 Tangible Assets

TOB provisions apply to tangible assets where the transferee is an accountable person in this State and where the transferred assets are capable of being operated on an independent basis:

- to carry on the same or a similar business,
- for the purposes of the transferee’s own business, or
- to carry on a different business using the assets acquired.

The relief applies even if the business or part of the business being transferred has ceased trading.

## 2.2 Intangible Assets

The transfer of intangible assets such as goodwill or intellectual property rights is capable of coming within the TOB provisions. As with tangible assets, to satisfy the conditions for applying TOB, the intangible assets must be transferred as part of an amalgam of assets which together are capable of operating as a business on an independent basis.

## 2.3 Multiple Businesses/Undertakings

Where a business or an independent part of an undertaking, to which TOB provisions apply, is transferred in conjunction with other assets which do not form part of the assets of that business or undertaking, then the application of TOB provisions does not extend to those other assets except to the extent that some or all of those assets, in their own right, constitute an amalgam of assets coming within TOB provisions.

In this context the CJEU has held, with regard to the sale of the assets of an undertaking consisting of the provision of management services together with the shares in the company to which management services were provided, that the sale of those shares could not fall within TOB provisions as the holding of those shares was a separate undertaking to the provision of the management services.

**“With regard, in the third place, to the relevance to the answer given of the fact that the transfer of 30% of the shares is closely linked to the management activities carried out by the vendor for the company in which it held its shares, it should be noted, as the Netherlands and United Kingdom Governments point out, that the cessation of the management activities appears to be the direct and logical result of the sale of X’s shareholding.**

**It would be otherwise only if the vendor’s management activities had been an autonomous part of its own undertaking that could be operated independently by the transferee and for which the transferee had paid a consideration separate from that of the price of the shares. However, in such a case, the transfer of a totality of assets would cover only the management activities, and not the disposal of shares, because the two transactions relate to different undertakings.”** [paragraphs 52 and 53, X BV, Case C-651/11].

Whether or not all of the assets being transferred in such circumstances were assets of the business being transferred is a matter of fact to be determined in respect of each case.

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## Scope of TOB Relief - Examples

1. The sale of an oil tanker, which had been used in the course of carrying on a business, would not of itself be capable of coming within TOB provisions, whereas:
  - a. the sale of such an oil tanker in conjunction with a totality of assets which made up an oil delivery business in the course of which the oil tanker had been used,
  - b. the sale of such an oil tanker in conjunction with other business assets, such as customer contracts for delivery of oil or goodwill, or
  - c. the sale of such an oil tanker which had been used in the course of a business consisting of leasing oil tankers, where the sale included an existing contract for the lease of that vehicle,are all capable of falling within TOB provisions.
2. The sale of premises together with manufacturing plant, stock, raw materials and goodwill can come within the TOB provisions whereas the sale of each of these assets independently of each other could not.
3. The transfer of intangible assets consisting of Intellectual Property which are subject to existing licence agreements for the use of those assets can fall within TOB provisions.
4. The holding of shares in a company or of a financial interest in a partnership would not generally come within the scope of VAT and the sale of those investments would not therefore come within TOB provisions.
5. Where a person carries out an economic activity consisting of commercial dealings in shares or partnership investments, the transfer of a portfolio of such investments in conjunction with other assets, such as the human and technical resources to manage that portfolio, will come within TOB provisions.
6. The transfer of a publican's licence, the extinguishing of a publican's licence or the transfer of a taxi licence of itself will not fall within the TOB provisions, whereas if a licence is transferred in conjunction with other assets, such as the business premises and fittings and fixtures, it will come within TOB provisions.
7. The transfer of the stock and fittings of a business in conjunction with the letting of the business premises by the transferor to the transferee falls within TOB provisions [Christel Schriever: CJEU Case C-444/10].

### 3 Specific rules applying to transfers of immovable goods (property)

The TOB provisions can apply to the transfer to an accountable person of a freehold or freehold equivalent interest in property or the transfer of a “legacy” leasehold interest where that property forms a component of an amalgam of assets being transferred which together are capable of being operated as a business on an independent basis. In considering the use of these provisions it is necessary in each case to examine the totality of assets being transferred. The transfer of a property of itself, whether or not previously used for the purpose of a business, without any additional assets such as plant, machinery, goodwill, stock or an existing tenancy/licencing agreement, which together with the property would be capable of being used to independently carry out a business, would not fall within the TOB provisions.

Specific issues in relation to property transactions must be considered where the transfer of property, including the transfer of a legacy lease, falls within TOB provisions. Guidance for transferors and transferees in respect of these issues has been included by Revenue in publications relating to VAT on property. Of particular relevance are the following:

For the transferor:

- [VAT and the Capital Goods Scheme](#) - See section 7 “Capital Goods Scheme (CGS) – Transfer of Business Relief”.
- [Waiver of Exemption - transitional VAT measures](#); where a waiver of exemption from VAT on short-term lettings is in place and the property being transferred is the only or last property subject to the waiver.
- [Transitional measures applying to legacy leases](#) - See section 8 “What is the VAT treatment of a legacy lease reversion”.

For the transferee:

- [VAT and the Capital Goods Scheme](#) - See section 7 “Capital Goods Scheme (CGS) – Transfer of Business Relief”.
- [Non-Business use of Property](#); where the property is used for or diverted to non-business use or private purposes.
- [Transitional measures applying to legacy leases](#) - See section 8 “What is the VAT treatment of a legacy lease reversion”.



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## Specific rules applying to transfers of property - Examples

8. A transfer of an immovable good which is subject to:
  - a. an existing letting agreement
  - b. an agreement to lease, or
  - c. a licence to occupy,comes within TOB provisions, as together those assets are capable of constituting an independent business or undertaking.
9. A transfer of an immovable good, of itself, without any additional assets (such as a letting agreement), which together with the immovable good, would constitute an independent undertaking cannot come within TOB, regardless of how the immovable good had been used prior to its transfer.
10. The transfer of a let property to the tenant will not be regarded as coming within TOB provisions as the only asset being transferred in those circumstances is the property itself and the transfer of a property without any additional assets, which together with the property would constitute an independent undertaking, cannot come within TOB, regardless of how the property had been used prior to its transfer.
11. The transfer of a retail premises together with the stock and fittings used in that retail business falls within the provisions of TOB.
12. The transfer of the assets of a letting business which includes property which is part let, part vacant and part undeveloped, by a single vendor in one transaction to a single purchaser, falls within the TOB provisions. The assets in question must however be shown to be assets of the letting business rather than assets of a separate business such as a development business. For the purposes of determining if a property is an asset of the letting business it will be necessary to show that the property was to be developed with the intention of being used for the purposes of that letting business. The appropriate CGS treatment should be applied to each property transferred.
13. Where a number of persons co-own a property which is let, the transfer by one of the co-owners of an interest in the property, whether to another co-owner or to a third party, is treated as falling within the scope of TOB.
14. Where an option to acquire an immovable good is purchased the VAT treatment of that option will follow the treatment of the transfer of the immovable good to which the option applies so that, if the transfer of the immovable good falls within the TOB provisions so too will the sale of the option to acquire those immovable goods.

To note: In the case of a transfer of property consisting of multiple units, the appropriate CGS treatment should be applied to each unit on an individual basis.

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## 4 Deductibility

Where costs are incurred by the transferor in relation to a transfer of assets to which TOB provisions apply, those costs are considered to be an overhead of the business and entitlement to deductibility is determined on that basis. Where however these overhead costs are shown to have a direct and immediate link to a clearly defined part of the transferor's economic activity, entitlement to deductibility in respect of those costs is determined by reference to whether or not that part of the transferor's economic activity to which the costs are linked gave rise to an entitlement to deductibility. [Abbey National Case C-408/98].

Costs incurred by the transferee in respect of the acquisition of assets to which TOB provisions apply are deductible subject to the normal deductibility rules, i.e. in so far as those costs are linked to the taxable economic activity of the transferee.

A reversionary interest for the purposes of section 93 of the VATCA 2010 is the interest in a property which was retained following the creation of a taxable leasehold interest (a legacy lease) prior to 1<sup>st</sup> July 2008. The provisions of section 93 are such that:

- the disposal of a reversionary interest is a supply of immovable goods to which VAT is not charged unless the property has been developed by, on behalf of, or to the benefit of the person making the disposal, subsequent to the creation of the legacy lease, and
- VAT on costs incurred in respect of the transfer of a reversionary interest which is not chargeable to VAT is not deductible.

A reversionary interest would be an asset of an economic activity consisting of the development and supply of immovable goods. The transfer of a reversionary interest together with the entitlements to be derived from the associated legacy lease constitutes a transfer of assets coming within TOB provisions. Where the circumstances of the transfer of a reversionary interest are such that it falls within the TOB provisions, VAT incurred, by either the transferor or the transferee, which is directly linked to the transfer of that interest would not be deductible.

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## Deductibility - Examples

15. A manufacturer transfers a taxable business consisting of a factory building, which is not new, together with various other assets. The VAT incurred by the transferor on services directly related to the transfer of the business is deductible because the services are cost components of the general overheads of a business which was fully taxable prior to its disposal.
16. A person transfers a business which consists of a building that is not new together with various other assets. The activities of the business were VAT exempt. The VAT incurred by the transferor on services directly related to the transfer of those assets is not deductible as the cost of those services form part of the general overheads of a non-deductible business activity.
17. Where ownership of a property, which is not new and is being exploited for the purpose of obtaining rental income, is transferred in circumstances where the TOB provisions apply to the transfer, the transferor's entitlement to deductibility depends on the use to which the property or individual parts of the property were put:
  - a. VAT on services directly related to the transfer is deductible if all the property or all units within the property were subject to taxable lettings.
  - b. VAT on services directly related to the transfer is partially deductible if only some of the units were subject to taxable lettings.
  - c. VAT on services directly related to the transfer is not deductible if none of the units were subject to taxable lettings.
  - d. VAT on services directly related to the transfer of a reversionary interest in a property is not deductible, if that property has not been re-developed since its creation.
  - e. In the case of a transfer of a development where some units are let on a taxable basis, some units are subject to exempt lettings while other units are vacant;
    - i. VAT is deductible in respect of the taxable lettings,
    - ii. VAT is not deductible in respect of exempt lettings, and
    - iii. entitlement to deductibility in respect of the vacant units is determined on a unit by unit basis.

## 5 Transactions after the transfer of business

Where a transferor of a business issues an invoice to a customer and, subsequent to the transfer of the business, the goods are returned or where a discount or rebate is due to the customer against the price originally charged for the goods, then sections 39 and 67(1)(b) of the VATCA 2010 (together with Regulation 20 of the VAT Regulations 2010) impose an obligation on the transferor to issue a credit note in respect of such transactions.

Revenue may, on a case by case basis, treat as valid a credit note which is issued by the transferee in the above circumstances, where this does not lead to a loss of revenue.

Similarly, where a transferor of a business supplies goods under warranty and, subsequent to the transfer of business, a customer returns goods to the transferee for repair/replacement, the transferee is not entitled to recover input VAT incurred on expenditure relating to the fulfillment of the warranty since this expenditure does not relate to any taxable supplies made by the transferee.

Again, Revenue may, on a case by case basis, accept a claim for deductibility in respect of expenditure incurred in the above circumstances where this does not lead to a loss of revenue.

Where, as part of the transfer of a business to which TOB applies, the transferor of the business transfers debts that, subsequent to the transfer, are determined to be bad debts, the transferee has no entitlement to bad debt relief since he or she is not the accountable person who made the supply. Bad debt relief, subject to the normal conditions, is available in respect of any debts retained by the transferor that are not included in the transfer.

Where, following a transfer of movable goods to which the TOB provisions applied, the transferee:

- a. uses those goods for the purpose of a business activity which does not give an entitlement to a VAT deduction
- b. uses the goods for a purpose other than for the purposes of his or her business,  
or
- c. disposes of the goods free of charge,

he or she is deemed to have made a supply of those goods and is liable to account for VAT on that supply. The amount on which VAT is chargeable on such a supply of goods is deemed to be the cost to the transferee of acquiring those goods.

Implications arising from a transfer of immovable goods to which the TOB provisions applied are referred to in paragraph 3 above.

## 6 Further Information

Enquiries regarding any issue contained in this guidance should be addressed to the Revenue District responsible for your tax affairs. Contact details for all Revenue Districts can be found on the [Contact Details Page](#).