

Non-business use of Property

This document should be read in conjunction with section 19(1)(g) & (1A), section 27(2) & (3) and section 64 of the VAT Consolidation Act 2010 (VATCA)

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This document deals with the various situations where a property is used for a private or non-business use. Private use can generally be thought of in terms of the use of an asset for personal purposes, e.g., where a person uses part of a business premises to live in. Non-business use is any use of a business asset that is not for the purposes of the business. The treatment of both private and non-business use is the same and the terms will be used inter-changeably in this document.

Please note the diversion of a property from taxable use to exempt use is dealt with by the capital goods scheme.

Where on or after 1 January 2011 expenditure is incurred by an accountable person on the acquisition or development of immovable goods forming part of the assets of a business and where such goods are used or to be used for any purpose other than those of the accountable person's business, **then no entitlement to deduction** arises to the extent the property is used for non business/private purposes. See paragraphs 4 and 5 below for the position pre and post January 2011.

1. What happens where there is a diversion of "business use" property to non-business use

Where a property that is in the business assets of a taxpayer is subsequently diverted or appropriated to a non-business use there is an adjustment required. Where the goods appropriated are immovable goods that are acquired or developed by an accountable person before 1 January 2011 the appropriation is treated for VAT purposes as a supply of the property. The treatment of this "deemed" supply depends on whether or not it occurs during the period when the property is considered 'new' [\[1\]](#). Where the property is acquired or developed by an accountable person after 1 January 2011 and comes to be used for private or non-business use purposes at some later stage, then the normal CGS rules deal with such scenarios.

2. How is the diversion to non-business use treated while a property is 'new'

Where the goods appropriated are immovable goods that are acquired or developed by an accountable person before 1 January 2011, the appropriation is deemed to be a supply of goods (property). This is known as a 'self-supply'. As the supply occurs during the period when the property is considered 'new' it is a taxable supply. The amount on which tax is chargeable is the original cost of the property. The net effect of the rule is that where a property is diverted to a non-business use during the period when it is still 'new' there is a claw-back of the VAT deducted on the acquisition or development of the property. Example 1 below illustrates how this operates in practice.

[1] See Revenue information on "Is VAT chargeable on the supply of property"

Example 1 – Diversion to non-business use while property is new

Ms. A constructs a property for €400,000 + VAT €54,000, on an undeveloped site. The property is completed on 1 February 2010. She deducts all of the VAT on the basis of her intention to use the property for a fully taxable purpose.

On 5 January 2011 (with no CGS adjustments during that period required because of fully taxable use) she moves her business to new premises and moves her family into the property where her business was conducted. This appropriation to a non-business use is deemed to be a supply of goods. As it is the first supply within five years of completion it is taxable. The taxable amount is the cost so the VAT is calculated as follows –

$400,000 \times 13.5\% = €54,000$ which is payable by Ms. A.

The effect of the rule is that the VAT deducted by Ms. A on the development costs is clawed-back when the property is diverted to the non-business use.

3. How is the diversion to non-business use treated while a property is not 'new'

As in paragraph 2 above, where the goods appropriated are immovable goods that are acquired or developed by an accountable person before 1 January 2011, the appropriation is deemed to be a supply of goods (property). As the supply occurs outside the period when the property is considered 'new' it is an exempt supply. If the person making the self-supply has deducted any of the VAT on the acquisition or development of a property there is a CGS adjustment as the supply is exempt from VAT [2]. The net effect of this rule is that there is a claw-back of the original VAT deducted reduced by the number of years that have elapsed in the CGS adjustment period since the acquisition or development of the property. Example 2 below illustrates how this operates in practice.

[2] See Revenue information on the Capital Goods Scheme: Other Adjustments

Example 2 – Diversion to non-business use while property is not new

On 31 March 2010 Mr. P purchases a property for €750,000 + VAT €101,250. He deducted all of the VAT on the basis he intended to make fully taxable supplies. On 5 May 2017 (with no CGS adjustments during that period required because of fully taxable use) Mr. P moves his business to a bigger premises and moves his family into the property from which he had operated the business. This appropriation to a non-business use is deemed to be a supply of goods. As it occurs more than five years from the completion of the property and Mr. P was entitled to deduct some of the VAT on the acquisition of the property a CGS adjustment is required –

B x N / T (See Revenue information on the Capital Goods Scheme:

Other Adjustments) $101,250 \times 13 / 20 = €65,813$ VAT payable by Mr. P

The effect of this rule is that the VAT deducted is paid back (reduced by the number of years that have elapsed in the adjustment period).

4. What happens when a property is acquired or developed for both business and non-business purposes

Where on or after 1 January 2011 expenditure is incurred by an accountable person on the acquisition or development of immovable goods forming part of the assets of a business and where such goods are used or to be used for any purpose other than those of the accountable person's business, **then no entitlement to deduction** arises to the extent the property is used for non business/private purposes. (Regulation 4(e) of S.I. 612 of 2010 - European Union (Value-Added Tax) Regulations 2010)

Prior to that date in such cases the taxpayer had a choice as to how to treat the property –

1. he or she could choose to keep the property out of the business by not deducting any of the VAT;
2. he or she could choose to apportion the usage on a fair and reasonable basis and deduct whatever portion of the VAT that related to the business portion of the property; or
3. he or she could choose to take the entire property into the business by deducting all of the VAT at the time of acquisition or development of the property.

In the case of 1 and 2 above there are no special rules. However in the case of 3 there are rules to deal with the portion of the property that relates to the non-business use and it is important to note that those rules continue to apply where the acquisition expenditure was incurred prior to 1st January. Post January there is, in effect, a dual system for dealing with such transactions depending on when the Vat was incurred.

5. What is the treatment of a property that is acquired for both taxable and non-taxable supplies prior to 1 January 2011 and that is brought into the business by the owner deducting all of the VAT in relation to the acquisition or development of the property

In the case of immovable goods acquired or developed by an accountable person on or after 1 January 2011, any activity consisting of the use of those goods, or part of those goods, for any purpose other than the accountable person's business is a non deductible activity.

Where the goods were acquired or developed by an accountable person before 1 January 2011, then in such cases the private use of the property was and continues to be deemed to be a supply of a service to the owner of the property. The amount on which tax is chargeable is calculated by reference to the cost of the property spread over a twenty-year period. Example 3 below illustrates how this operates in practice for a pre 2011 acquisition.

Example 3 - Taxing the non-business use of a property acquired pre 1 January 2011

Mr. C purchases a new house on 23 July 2010 for €500,000 + VAT €67,500. Mr C intends to use one of the rooms in the house from which to run his part-time bookkeeping business. He chooses to bring the entire property into his business by deducting all of the VAT.

A fair and reasonable split of the use of the property between taxable and non-business use is 10% and 90% respectively. This means that Mr C is using the property for 90% non-business use but has deducted 100% of the VAT.

The non-business use is deemed to be a supply of a service and is taxable as follows. The taxable amount is calculated by reference to a twenty-year period and then divided into the amount due for each taxable period –

$90\% \times 500,000 \times 1/20 \times 1/6 = 3,750$ is the taxable amount.

The VAT due for **each taxable period** for twenty years is $3,750 \times 21\% = €788$.