VAT Treatment of Property Developers Renting out Residential Properties

This document should be read in conjunction with section 94(8)(b) & (c) and section 95(4) of the VAT Consolidation Act 2010 (VATCA 2010)

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Table of Contents

Introduction

New rules for Value Added Tax (VAT) on property transactions came into effect on 1 July 2008. This document deals with situations where a property developer, or a person connected with a property developer, who was entitled to deduct the VAT incurred on the acquisition or development of residential property, subsequently rents out that residential property on or after 1 July 2008. There are two separate VAT rules for such scenarios depending on when the property was completed.

All legislative references in this document are to the Value Added Tax Consolidation Act 2010.

1. When is a property considered 'completed'?

'Completed' is defined in section 94(1). Generally speaking, a property is completed when it is ready to be used for the purposes for which it was designed. There are certain criteria that must be met before a property can be considered completed. For example, the utility services required for the purposes for which it was designed must be connected. However, the fact that the utility services are connected does not in itself necessarily mean that a property is completed. **Revenue is prepared to accept, in cases to which this guidance applies, that a property may be regarded as not having been completed until it has been rented.**

2. Properties completed before 1 July 2008 and rented on or after that date

Where a property developer develops a residential property, that property is completed before 1 July 2008, and that property is rented on or after 1 July 2008, then there is a full claw-back of the VAT deducted by the developer. This claw-back is triggered by section 95(4) and is effected at the time the letting of the residential property is created. Example 1 below illustrates how this operates.

Example 1

Developer D constructs a house for sale. The cost of constructing this house is €1,000,000 + VAT €135,000. Developer D deducts all of this VAT. The development of the house is completed on 1 February 2008. Developer D is unable to sell the house and instead rents it out. The letting is for two years and is created on 4 August 2008. This triggers an immediate claw-back under section 95(4) using the formula in section 95(4)(b);

$$TD \times \frac{(Y - N)}{Y}$$

TD = amount of tax deducted
Y = 20
N = 0 (number of full years since development occurred)

$$135{,}000 \times \frac{(20 - 0)}{20}$$

= €135,000 VAT payable by Developer D in the taxable period in which the letting is created, that is, July/August 2008.

Developer D must account for this amount in his/her VAT return for July/August 2008.

In Example 1, the date of completion was 1 February 2008. However, the developer could choose to treat the date of first letting as the date of completion, that is, 4 August 2008. If the developer choses this date as the date of completion, then the treatment would be the same as set out in Example 2 below.

3. Properties completed on or after 1 July 2008 and rented on or after that date

Where a property developer develops a residential property, that property is completed on or after 1 July 2008, and that property is rented on or after 1 July 2008, then no immediate claw-back occurs.

Instead, the developer will be required to adjust the VAT deductibility at the end of the second Capital Goods Scheme (CGS) interval, and each subsequent interval, until the property is sold. Example 2 below illustrates how this operates.

Example 2

Developer E constructs a house for sale. The cost of constructing this house is €1,000,000 + VAT €135,000. Developer E deducts all of this VAT. The development of the house is completed on 15 July 2008. Developer E is unable to sell the house and instead rents it out. The letting is for two years and is created on 4 August 2008. There is no immediate claw-back of the VAT deducted. Developer E's accounting year ends on 31 December each year.

The first CGS initial interval for Developer E in respect of the property begins on 15 July 2008. It ends on 14 July 2009. The second interval ends on 31 December 2009, the end of the accounting year. An adjustment arises at this point in accordance with section 64(3)(a) as follows;

C – D

C = reference deduction amount
D = interval deductible amount

6,750 – 0 = €6,750 payable as tax due by Developer E for the taxable period following the end of the second interval, that is, the tax is due for the January/February 2010 VAT period.

This payment essentially amounts to Developer E paying back 1/20th of the VAT deducted in respect of the development of the property. At the end of each subsequent interval, in the taxable period following the end of each accounting year, the same amount of €6,750 will be payable by Developer E for as long at the property is not used for a taxable purpose.

What is the position when a residential property, such as the properties in Examples 1 and 2 above, is subsequently sold after being rented?

In both cases, the sale is subject to VAT on the full consideration received regardless of how long a period of time the properties have been let. However, there are two different treatments in relation to the deductibility that has been clawed back depending on the scenario. These are illustrated by example below;

Example 1 Continued

At the end of the lease, 3 August 2010, Developer D sells the property for €1,200,000. The sale is subject to VAT @ 13.5% = €162,000.

There is a VAT credit given to Developer D for the VAT that was clawed back on the letting of the property, but this credit is reduced by the number of years that have elapsed since the property was completed;

$$E \times \frac{N}{T}$$

E = non-deductible amount
N = 18 (no of full intervals remaining in adjustment period + 1)
T = 20 (total number of intervals in adjustment period)

$$135{,}000 \times \frac{18}{20}$$

= €121,500 given as VAT credit for the taxable period in which the sale occurs, that is, July / August 2010. Developer D must, however, also account for VAT of €162,000 for that period, being the VAT due on the sale of the property, resulting in a net liability of €40,500.

Where there has been an adjustment using the formula in section 95(4)(b) the 'non-deductible amount' is the total amount of tax that the person had an entitlement to deduct in respect of the acquisition or development of the property, as employed originally in the formula in section 95(4)(b) for the purpose of calculating the deductibility adjustment. In some cases this non-deductible amount may be greater than the deductibility adjustment made as a result of applying the formula in section 95(4)(b), however, in the majority of cases, as in this example, the figures will be the same.

Example 2 Continued

At the end of the lease, 3 August 2010, Developer E sells the property for €1,200,000. The sale is subject to VAT @ 13.5% = €162,000.

There is no VAT credit given as the claw-back of €6,750 that occurred in the January / February 2010 taxable period was in respect of the use to which the property was put during the second interval, i.e. an exempt use. No further claw-back of inputs arises as the taxable supply of the property in August 2010 constitutes a taxable use for the third and all subsequent intervals.

Developer E must account for VAT of €162,000 for the July / August 2010 taxable period, being the VAT due on the sale of the property.

While the net amounts that developers D and E will return in respect of their sales of the two houses differ greatly, this reflects the fact that Developer D, in making the deductibility adjustment in 2008, had already accounted for the potential exempt use of the property for the full remaining portion of its CGS adjustment period. Developer D will therefore benefit from its diversion to taxable use via its taxable sale in 2010. Developer E, on the other hand, would have made adjustments for exempt use only on an interval by interval basis. In consequence, both developers have consistent entitlements to deductibility for the remaining intervals in the adjustment periods.