KEY TO NEW VAT ON PROPERTY SYSTEM

1. Vendors' / Purchasers' obligations where sale completed on or after 1 July 2008

Property	Tax Status	Vendor Must	Purchaser Must	VAT Calculated by Reference to	Deductibility Adjustment For Vendor
New or nearly new freehold/freehold equivalent property	Taxable	Give VAT invoice. Charge VAT at 13.5%	Ask for: (a) Invoice; (b) date of development; and (c) evidence of dates and periods of occupation if relevant.	Market value	N/A
Developed second-hand property sold during adjustment period (vendor a taxable person)	Exempt with option to tax	Consider:- (a) obliging purchaser to exercise joint option to tax, and (if appropriate), claiming VAT rebate; or (b) accounting to the revenue for deductibility adjustment	If joint option exercised: (a) ask for VAT history; and (b) apply reverse charge VAT.	If option exercised: market value. If option not exercised: Apply the formula[1]: $B \times \frac{N}{T}$	Yes, if option to tax not exercised

[1] B is the amount of VAT reclaimed. N is the number of full intervals remaining in the adjustment period in relation to that property at the time of supply plus one. T is the total number of intervals in the adjustment period in relation to that property (see VAT Act 1972 Section 12 E(7)(c)).

Developed property sold during adjustment period (vendor not a taxable person)	Exempt with option to tax	Consider:- (a) obliging purchaser to exercise joint option to tax to secure partial refund of VAT under the VAT Act, Section 12 E(7)(a) on acquisition or development; or (b) treating supply as exempt	If joint option exercised: (a) ask for VAT history; and (b) apply reverse charge VAT.	If option exercised: market value.	N/A
Transitional leasehold property sold during adjustment period (vendor a taxable person)	Taxable	Give: (a) VAT statement; and (b) copy of capital goods record.	Ask for: (a) VAT statement; and (b) copy of capital goods record; and self account for VAT.	Apply the formula[2]: $T \times \frac{N}{Y} \times 13.5\%$	N/A

[2] T is the total VAT incurred on acquisition/development, N is the number of full intervals plus one, that remain in the adjustment period at the time of the assignment or surrender and Y is the total number of intervals in that adjustment period for the person making the assignment or surrender

Transitional leasehold property sold during adjustment period (vendor not a taxable person)	Exempt with option to tax	Consider: (a) obliging purchaser to exercise joint option to tax to secure partial refund of VAT under Section 12 E (7)(a); or (b) treat supply as exempt.	If option exercised ask for: (a) VAT statement (b) copy of capital goods record; and self account for VAT.	Apply formula as above.	N/A
Out of scope property	Not taxable	Confirm tax status	Ask for tax status to be confirmed.	N/A	N/A

2. Owner of Capital Goods held on 1 July 2008 and Acquired before that Date

Retain data on:

(a) any acquisition, development and refurbishment expenditure and on associated services (including legal, engineering, architectural and other fees); and

(b) dates of acquisitions, developments, refurbishments and periods of occupations of a property which is a capital good.

Before any sale, update and verify capital goods record in a case of any development after 30 June 2008.

On any sale, be sure the VAT clause in the agreement for sale is appropriate.

3. Owner of a property which is a Capital Good Acquired on or after 31 July 2008

As 2, but also deal with deductibility adjustments after each interval, and account for or reclaim VAT after each interval.

4. Landlord in respect of a Letting

Consider exercise of landlord’s option to tax the rent as service at 21% to avoid deductibility adjustment. The tenant will then pay VAT on rent.

Be wary of connected person rules.

Keep capital goods record.

5. New Concepts Introduced

(a) Adjustment Period

A period of intervals, 20 for most property (approx 20 years)- 10 for refurbished property (approx 10 years) from the date of development or acquisition of a property in respect of which the capital goods scheme operates.

(b) Capital Good

A developed property or part thereof, including a refurbished property.

(c) Capital Goods Scheme

Reflects use of a capital good over an adjustment period between vatable and exempt use, with corresponding adjustments as regards VAT recovery.

(d) Completion

Development has reached the state (apart from minor finishing) at which it can effectively be used for the purposes for which it was designed with all necessary utility services connected.

(e) Connected Person

Defined very widely – it includes spouse, relative, spouse of relative, partnership, control, common purpose, etc. – can impact on lettings and sales.

(f) Development

Construction, demolition, extension, alteration, or reconstruction of a building on land/ Carrying out engineering or other operations in, on, over or under land to adapt it for a materially altered use.

(g) Exempt Disposal

The disposal during the adjustment period of a commercial freehold/freehold equivalent property that is not new/nearly new.

(h) Exempt with Option to Tax (Sale)

A most misleading expression. On the sale during the adjustment period of a second-hand property a vendor must repay all or part of VAT claimed on acquisition or development or by using the joint option, charge VAT on the selling price to the purchaser. The exercise of the option will preserve the vendor's VAT recovery position. A purchaser should consider his ability to recover this VAT as the exercise of this option brings a property which could potentially outside the VAT net back into the VAT net. The option to tax is not available for residential property.

(i) Freehold Equivalent Interest

The effective economic interest or substantially the effective economic interest in a property including where payment is staggered over a period of up to 5 years.

(j) Occupation

In use or let and in use (in accordance with planning permission, if granted).

(k) Option to Tax (Leases)

Lessor can, without lessee agreement, opt to apply VAT at the 21% rate to rent payable under a lease of developed commercial property. Therefore, VAT recovery on acquisition/development costs for the lessor will be preserved. Option can be exercised property by property.

(l) Refurbishment

Development on a previously completed building.

(m) Transitional Property Interests

Freehold/freehold equivalent commercial property acquired/developed before 1.7.2008 that has not been disposed of prior to that date until disposal of that property on or after that date, and, leasehold interests of 10 years or more (other than a freehold equivalent) created before 1.7.2008 and held on 1.7.2008.

(n) New/Nearly New Property

(i) Unoccupied commercial property completed/developed within the last 5 years;

(ii) Commercial property developed within the last 5 years until the property has been occupied for at least 24 months since development and until there has been at least one arms length sale; and

(iii) Developed residential property sold by a developer at any time (whether or not let since development).

(o) Second hand

Not new/nearly new property but property which is still in the adjustment period.

6. Concepts Abandoned

(a) Capitalised value of a lease.

(b) The economic value test for leases.

(c) Section 4A procedure.

(d) Waiver of exemption for short term residential letting.

7. Concept Transformed

New rules apply for a vendor and a purchaser on the transfer of a business where a capital good is transferred.

8. Warning

This note is intended to highlight some of the more significant features of the new VAT on property system. It is not a substitute for reading and applying the legislation.