Law Society of Ireland

PRE-CONTRACT VAT ENQUIRIES (February 2014 Edition)

Subject to Contract / Contract Denied

To be answered prior to settling the conditions of sale where VAT is relevant[1] © Law Society of Ireland

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Vendor: The Health Service Executive

Vendor's VAT Registration No: IE9984032I

Purchaser: TBC

Subject Property: Specialist Building 4B, Elm Park Green, Merrion Road, Dublin 4

"Occupational Lease" means a lease which is not a freehold equivalent interest as defined in Section 2(1) the VAT Act.

"PCVE" means these Enquiries.

"Tenant's Refurbishment" means capital goods as described in Section 64(7) of the VAT Act.

"VAT Act" means the Value-Added Tax Consolidation Act 2010 as amended from time to time and related VAT regulations.

"TOB" means transfer of a business or part of a business under Section 20(2)(c) the VAT Act.

Reference to "VAT Special Condition 3" means the recommended format of VAT special condition current at the time of sale as referred to in Special Condition 3 of the Law Society's standard General Conditions of Sale.

Private Treaty Sale

Prior to the presentation of the draft Conditions of Sale by Private Treaty, the Purchaser shall complete the Purchaser Statement on the Purchaser's VAT status on Page 3 and issue these PCVE in duplicate to the Vendor. After completing the answers, the Vendor shall complete the drafting of Special Condition 3. The Vendor shall then send the draft Conditions of Sale together with one completed form of these PCVE to the Purchaser.

Auction Sale

When furnishing the Conditions of Sale for an auction sale, the Vendor shall answer these PCVE purely for the purposes of providing VAT information to a prospective Purchaser in relation to the sale of the Subject Property, including a sale which would otherwise be exempt,[2] on the assumption that the prospective Purchaser is a taxable person who will exercise the joint option to tax the sale but without prejudice to the Purchaser's right to opt, or not to opt, as provided in Special Condition 3.

The enquiry part of these PCVE is divided into 7 Sections:

Section 1: Is VAT chargeable on the sale.
Section 2: Vendor charges VAT at the appropriate reduced rate.
Section 3: Purchaser self accounts for VAT at the appropriate reduced rate.
Section 4: Transfer of Business.
Section 5: Vendor charges VAT at the standard rate.
Section 6: Sale of Let Property.
Section 7: Tenant's Refurbishment.

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1 This form is not appropriate for use:
- on the sale of secondhand residential property sold in a private capacity;
- on the sale of new residential property to a Purchaser as a private person for a VAT inclusive consideration;
- on the grant of an Occupational Lease; or
- on a sale where VAT Special Condition 3 will be deleted entirely and the Purchaser does not require to know the VAT history of the Subject Property.

In any such case Special Condition 3 will be deleted entirely

2 "Exempt" includes the situation where the property is not mandatorily taxable but the joint option to tax may be exercised where both parties are taxable persons.

Where appropriate the terms “vendor”/”landlord” and “purchaser”/”tenant” are used interchangeably.

The Vendor should answer these PCVE in the section(s) which are relevant to the sale of the Subject Property.

Where there is insufficient space, the Vendor should provide the answer on an attached sheet or attached sheets.

For each part of the Subject Property which has a separate VAT status, a separate set of answers will be required.

The purposes of these PCVE are to enable the Purchaser’s Solicitor to obtain the information necessary to advise the Purchaser on VAT issues relating to the Subject Property and to assist in the drafting of Special Condition 3. These purposes are stressed as in certain situations these PCVE may require more information to be furnished than is necessary and in other situations more information may actually be required.

To avoid serious difficulties, it is important that Special Condition 3 is drafted to suit the VAT status of the sale and paragraphs which are not relevant are struck out or omitted. A guide (the “Guide”) as to how, using the answers to these PCVE, the Vendor shall settle VAT Special Condition 3 is set out on pages 19 to 25. If VAT Special Condition 3 is to be struck out in its entirety and the Purchaser does not require to know the VAT history of the Subject Property, it is not necessary to use these PCVE.

These PCVE, the Guide and VAT Special Condition 3 are general in nature and may not cover all situations. If in doubt, the advice of a tax expert should be sought.

These PCVE shall be furnished in its entirety without amendment.

Warning: Before answering the PCVE, the Vendor should be satisfied as to the VAT status of the Subject Property and the sale. The answers will be relied upon by the Purchaser.

We certify that these PCVE are those as issued by the Law Society of Ireland (February 2014 Edition) without alteration or omission and that the numbering is unchanged.

_____

Signature of Issuing Solicitor

_____

Date

Purchaser Statement on Purchaser's VAT Status

	Please mark as appropriate	Yes	No
1.	The Purchaser is a taxable person as defined in Section 2 of the VAT Act who carries on a business in the State.[3]	☐	☐
2.	On the assignment or surrender of a "legacy lease"[4] (see VAT Special Conditions 3.2 and 3.6 and enquiries 2.4 and 3.3) the Vendor will require the Purchaser to confirm whether the Vendor or the Purchaser will account for VAT on the assignment or surrender. If the Purchaser answers "No" to this item 2, the Vendor must account for VAT on the assignment or surrender. The Purchaser is a person described in Section 95(8)(c) of the VAT Act.[5]	☐	☐
3.	The Purchaser is an accountable person[6] as defined in Section 5 of the VAT Act.[7]	☐	☐
4.	Purchaser's VAT registration number:	_____	

_____

Signature of Purchaser (or Purchaser's Agent)

_____

Date

_____

Capacity of Signatory

3 In the case of a sale where the joint option to tax (see VAT Special Condition 3.3.1 first paragraph) is to be exercised, the Vendor will require the Purchaser to confirm that the Purchaser is a "taxable person" who carries on a business in the State. Section 1 of the VAT Act defines a "taxable person" as "a person who independently carries on a business in the Community or elsewhere". Where the joint option to tax is exercised, the Purchaser, if a taxable person not already registered for VAT, should register for VAT and account accordingly.

4 Legacy leases (see Section 95(1)(b) of the VAT Act) are interests in leasehold property (so called because they are a legacy from the old system of VAT on property) that were treated as a supply of goods under the old rules. For a definition of "Legacy Lease" see section 3.7 of the Revenue VAT on Property Guide.

5 The following is a non-exhaustive list of purchasers described in Section 95(8)(c) of the VAT Act who should "self-account":
- (a) an accountable person;
- (b) a Department of State or Local Authority;
- (c) a landlord;
- (d) a bank;
- (e) an insurance company or insurance broker;
- (f) An Post;
- (g) the operator of a national broadcasting or television service; or
- (h) a transport operation

and the following is a non exhaustive list of persons who do not "self account":
- (i) a bookmaker;
- (j) a doctor;
- (k) a dentist;
- (l) a private individual;
- (m) a university, training college or other educational establishment;
- (n) an undertaker.

When in doubt, a direction should be sought from the Inspector of Taxes.

6 An accountable person is a taxable person who engages in the supply within the State of taxable goods or services.

7 Required only if the transaction is a transfer of a business under Section 20(2)(c) of the VAT Act.

SECTION 1: IS VAT CHARGEABLE ON THE SALE

		Please mark as appropriate	Yes	No
1.	**IS VAT CHARGEABLE ON THE SALE?**		X	☐
	If the answer to enquiry 1 is "Yes", confirm that the Vendor is a taxable person under Section 2 of the VAT Act for the purposes of the sale of the Subject Property.		X	☐
	If "Yes", please state Vendor's VAT Number and proceed to Section 2.		IE9984032I	
1.1	If the answer to enquiry 1. is "No", please indicate by a "Yes" or "No" answer which of the following categories of sale applies:			
(a)	The sale of a freehold/freehold equivalent interest which: (i) is not a sale as part of a TOB; and (ii) is not a sale where the Vendor is requesting the Purchaser to exercise the joint option to tax.		☐	☐
(b)	The assignment or surrender of an Occupational Lease: (i) which is not a sale as part of a TOB; and (ii) which is not a supply of a good or a service where VAT is chargeable on the sale.		☐	☐
(c)	The sale as part of a TOB qualifying for non application of VAT under the VAT Act Section 20(2)(c).		☐	☐
(d)	Other category of sale on which VAT will not be chargeable either as the supply of a good or a service.		☐	☐
1.2	If the answer to either of enquiries 1.1(a) or (d) is "Yes", confirm that VAT Special Condition 3 will be deleted in its entirety. (If Vendor has answered "Yes" to either of such enquiries and agrees that VAT Special Condition 3 is to be deleted, answer enquiry 1.6 and related enquiries. No further answers are required in these PCVE but the right is reserved to make further enquiries to investigate the VAT history of the Subject Property.			
1.3	If the answer to enquiry 1.2 is "No", answer enquiry 1.6 and related enquiries and enquiries 2.2 and 2.3 and explain in writing on an **attached sheet** how the Vendor proposes to deal with VAT Special Condition 3 of the Law Society General Conditions of Sale.[8] No further answers to these PCVE are required but the right is reserved to make further enquires to investigate the VAT history of the Subject Property.			
1.4	If the answer to enquiry 1.1(b) is "Yes", answer enquiry 1.6 and related enquiries and Section 7 and give details on an **attached sheet** to satisfy the Purchaser as to why VAT is not chargeable. No further answers to these PCVE are required but the right is reserved to make further enquires to investigate the VAT history of the Subject Property.			
1.5	If the answer to enquiry 1.1(c) is "Yes", answer enquiry 1.6 and related enquiries and proceed to Section 4 (Transfer of Business).			
1.6	**Let (or previously let within 20 years) Subject Property**			
1.6.1	Is any part of the Subject Property let or sublet?		☐	☐
1.6.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?		☐	☐
1.6.3	If the answer to either enquiry 1.6.1 or 1.6.2 is "Yes", please also answer Section 6.			

8 If it is the case that in addition to the purchase price, under VAT Special Condition 3.4 the Vendor will charge the Purchaser an amount equal to the capital goods adjustment which the Vendor will suffer as a result of the sale of the Subject Property, give details to satisfy the Purchaser as to how this amount is calculated together with copies of relevant capital goods records.

SECTION 2: VENDOR CHARGES VAT AT THE APPROPRIATE REDUCED RATE

		Please mark as appropriate	Yes	No
2.	**WILL THE VENDOR CHARGE VAT AT THE APPROPRIATE REDUCED RATE?**[9]		☒	☐
	If the answer to enquiry 2 is "No", proceed to Section 3.			
2.1	If the answer to enquiry 2 is "Yes" indicate by a "Yes" or "No" answer which one of the following categories of sale at (a) to (d) applies:			
(a)	Sale of partially developed property.[10]		☐	☐
(b)	Sale of property coupled with building.[11]		☐	☐
(c)	Sale of a completed "new or nearly new" freehold/freehold equivalent interest.[12]		☒	☐
(d)	Assignment or surrender of a legacy lease to a person not specified in Section 95(8)(c) of the VAT Act.[13]		☐	☐
	If the answer to either of enquiries 2.1 (a) or (c) is "Yes", answer enquiries 2.2, 2.3 and 2.5. No further answers are required.			
	If the answer to enquiry 2.1(b) is "Yes", answer enquiries 2.2 and 2.5. No further answers are required.			
	If the answer to enquiry 2.1(d) is "Yes", answer enquires 2.4 and 2.5. No further answers are required.			
2.2	Please furnish now a draft VAT invoice showing the amount of VAT chargeable on the sale of the Subject Property.		To be provided	
2.3	**Development**[14]			
2.3.1	Please state the date (irrespective of whether or not such date was before, on or after 1 July 2008) when the Subject Property was last developed to such an extent that such development renders the sale of the Subject Property a taxable supply of immovable goods in respect of which the development has been completed.[15]		Completed September 2023	
2.3.2	Please provide a description of such development on an **attached sheet**. Please also state:			
	(i) the cost of the development		€ _____	
	(ii) the total tax incurred; and		€ _____	
	(iii) the non deductible amount[16]		€ _____	
	and furnish copies of the development contract or contracts			

9 Sections 3(1)(a), 94(5) and 95(3) or (6) of the VAT Act. Note if the Vendor will not charge VAT but either the Purchaser will be chargeable to VAT or the Vendor intends that the Purchaser will be so chargeable, the appropriate answer is "No".

10 Partially developed property refers to property which has been developed but has not been completed within the meaning of Section 94(1) of the VAT Act and is not excluded by Section 94(2)(d) of the VAT Act (20 year look back period). See Note 14 below for definition of "development".

11 Section 94(3) of the VAT Act.

12 This includes transitional properties held on 1 July 2008 by a taxable person where the Vendor had the right to deduct VAT on the acquisition or development. The supply of these properties can be taxable under the VAT Act as a supply of immovable goods without reference to the exercise of any joint option. This enquiry can only be answered in the affirmative where development (other than minor development) to a non residential property has been completed within 5 years prior to completion of the sale and the property has not been occupied for at least 2 years.

13 See footnote 5.

14 Section 2(1) of the VAT Act defines "development" as the construction, demolition, extension, alteration or reconstruction of any building on the land, or the carrying out of any engineering or other operation in, on, over or under the land to adapt it for a materially altered use. This does not include minor development to a building which does not adapt the building for a materially altered use and the value of the works do not exceed 25% of the value of the property at the time of sale.

15 Section 94(1) of the VAT Act.

16 Section 63(1) of the VAT Act.

		Please mark as appropriate Yes	No
2.3.3	If more than one such development has taken place which renders the sale of the Subject Property taxable, answer enquiry 2.3.2 for each such development on **attached sheet.**		
2.3.4	2.3.4 Was any such development a refurbishment[17]? If the answer is "Yes", please provide details on an **attached sheet.**	☐	☒
	Completed[18]		
2.3.5	If such development of the Subject Property was completed in stages please describe on an **attached sheet** the stages, and specify the date of completion for each stage and the relevant costs.		
2.3.6	Produce documentary evidence of the date(s) of completion of such development(s) and if relevant, the stages.		
	Occupied[19]		
2.3.7	Has the Subject Property been occupied in its entirety in accordance with appropriate planning permission since the date of such development?	☐	☒
2.3.8	If the answer to enquiry 2.3.7 is "No", give particulars on an **attached sheet** of: (a) dates, periods and other details of occupation of the Subject Property since such completion; and (b) the authorised use under any planning permission in respect of the Subject Property.		
2.3.9	Since completion of the most recent development which for the purposes of the VAT Act causes the sale of the Subject Property to be taxable as the supply of immovable goods, was every part of the Subject Property occupied for the purposes of the VAT Act?	☐	☒
2.3.10	If the answer to enquiry 2.3.9 is "Yes", please provide details on an **attached sheet**.		
	Sales Since Completion of Development[20]		
2.3.11	Since the completion of the most recent development of the Subject Property which for the purposes of the VAT Act causes the sale to be taxable as the supply of immovable goods, has there been a sale or sales of the Subject Property?	☐	☐
2.3.12	If the answer to enquiry 2.3.11 is "Yes", give details on an **attached sheet** of all sales for the period since the later of the most recent development or 5 years last past and include information on: (a) The VAT charged on each such sale; and (b) Whether the parties were "connected persons" within the meaning of Section 97(3) of the VAT Act.		
2.4	**Legacy Lease[21] – Vendor Accountable for VAT**		
2.4.1	Please identify by a "Yes" or "No" answer the type of sale of the Subject Property by reference to the following:		
(a)	assignment/surrender of a legacy lease held by the original lessee.	☐	☐
(b)	assignment/surrender of a legacy lease acquired by the Vendor by assignment prior to 1 July 2008.	☐	☐
(c)	assignment/surrender of a legacy lease acquired by the Vendor by the first assignment made after 1 July 2008.	☐	☐

17 Section 63(1) of the VAT Act.
18 Section 94(1) of the VAT Act.
19 "Occupied" means occupied and fully in use following completion where that use is one for which planning permission for the development of the property was granted and where the Subject Property is let, occupied and fully in use by the tenant.
20 "Sale" or, in the term used in the VAT Act, "supply", means "the transfer in substance of (a) the right to dispose of immovable property as owner or (b) the right to transfer immovable goods". (See the VAT Act Section 19(2)).
21 See footnote 4.

	Please mark as appropriate	Yes	No
(d)	assignment/surrender of a lease acquired by the Vendor as the successor in title of a person who acquired the legacy lease in the manner described in (c) above.	☐	☐
2.4.2	Was the Vendor entitled or deemed to have been entitled to deduct any VAT on the acquisition or development of the Subject Property?	☐	☐
2.4.3	If the answer to enquiry 2.4.2 is "Yes", please provide now: (a) draft document specified by Section 95(9)(a) of the VAT Act containing details of the VAT due on the sale of the Subject Property and the number of intervals remaining in the adjustment period; (b) evidence to verify the "total tax incurred"; and (c) evidence to confirm the number of intervals in the adjustment period.		
2.4.4	If the answer to enquiry 2.4.2 is "No", is the Vendor requesting the Purchaser to co-operate in exercising the joint option to tax the sale in accordance with Section 94(5) as authorised by Section 95(7)(b) of the VAT Act?	☐	☐
2.4.5	If the answer to enquiry 2.4.4 is "Yes", please set out the quantum of the VAT that may be recovered by the Vendor as a result of the exercise of such joint option	€ _____	
2.4.6	Without prejudice to the Purchaser's position in respect of the response to enquiry 2.4.4 would the Vendor agree not to exercise the joint option to tax and on what terms?	☐	☐
2.4.7	If the answer to enquiry 2.4.4 is "Yes", the Vendor is a taxable person but is not registered for VAT and the Purchaser is willing to co-operate in exercising the joint option to tax, please confirm that the Vendor will be so registered before completion and will on or prior to completion supply evidence of such registration.	☐	☐
2.5	**Let (or previously let within 20 years) Subject Property**		
2.5.1	Is any part of the Subject Property let or sublet?	☐	☒
2.5.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?	☐	☐
2.5.3	If the answer to either enquiry 2.5.1 or 2.5.2 is "Yes", please also answer Section 6.		

SECTION 3: PURCHASER SELF ACCOUNTS FOR VAT AT THE APPROPRIATE REDUCED RATE

		Please mark as appropriate	Yes	No
3.	**DOES THE VENDOR INTEND THAT THE PURCHASER WILL SELF ACCOUNT FOR VAT AT THE APPROPRIATE REDUCED RATE[22]?** **If the answer to enquiry 3 is "No", proceed to Section 4.**		☐	☒
3.1	If the answer to enquiry 3 is "Yes", indicate by a "Yes" or "No" answer which of the categories of sale at (a) or (b) applies:			
(a)	Sale of freehold/freehold equivalent interest where the Vendor is requesting that the joint option to tax the Subject Property shall be exercised.[23]		☐	☐
(b)	Assignment or surrender of legacy lease[24] to a Purchaser who is a person specified in Section 95(8)(c) of the VAT Act.[25]		☐	☐
	If the answer to enquiry 3.1(a) is "Yes", answer enquiries 3.2 and 3.4. No further answers in these PCVE are required but the right is reserved to make further enquiries to investigate the VAT history of the Subject Property.			
	If the answer to enquiry 3.1(b) is "Yes", answer enquiries 3.3 and 3.4. No further answers are required in these PCVE but the right is reserved to make further enquiries to investigate the VAT history of the Subject Property.			
3.2	**Development[26]/Completion[27]**			
3.2.1	Please:			
(a)	state the date (irrespective of whether or not such date was before, on or after 1 July 2008) when the Subject Property was last developed to such an extent that any supply of the Subject Property immediately following the completion of that development was or would have been treated under the VAT Act as in force on 1 July 2008 as a taxable supply of immovable goods in respect of which the development had been completed (as defined in Section 94(1)) of the VAT Act);			
(b)	provide a description of such development on an **attached sheet** giving the following information:			
	(i) the cost of the development; (ii) the total tax incurred; and (iii) the non-deductible amount,[28] and		€_____ €_____ €_____	
(c)	furnish copies of the development contract or contracts			

22 Sections 94(5), 95(5) or 95(7)(b) of the VAT Act.

23 This includes:
(a) transitional freehold/freehold equivalent property held prior to 1 July 2008 which is not new or nearly new and where the Vendor had the right to deduct VAT; and
(b) transitional freehold/freehold equivalent property held prior to 1 July 2008 where the Vendor had no right to deduct VAT regardless of whether the property is new or nearly new but the Vendor requires the joint option to tax to be exercised in a sale to a taxable person.

24 See footnote 4.

25 See reply 2 of the Purchaser Statement on Purchaser's VAT status at page 3. See also footnote 5.

26 Section 2(1) of the VAT Act defines "development" as the construction, demolition, extension, alteration or reconstruction of any building on the land, or the carrying out of any engineering or other operation in, on, over or under the land to adapt it for a materially altered use. This does not include minor development to a building which does not adapt the building for a materially altered use and the value of the works do not exceed 25% of the value of the property at the time of sale.

27 Section 94(1) of the VAT Act.

28 Section 63(1) of the VAT Act.

		Please mark as appropriate	Yes	No
	Joint Option to Tax[29]			
3.2.2	If the Vendor is requesting that the Purchaser shall agree to jointly opt to have the sale chargeable to VAT in accordance with Section 94(5) of the VAT Act, please set out the quantum of the VAT that may be recovered by the Vendor as a result of the exercise of such option if the sale of the Subject Property is completed on the closing date.[30]	€ _____		
3.2.3	If the Vendor is requesting that the Purchaser shall agree to jointly opt to have the sale chargeable to VAT in accordance with Section 94(5) of the VAT Act, please state the amount of the VAT repayment under the Capital Goods Scheme which the Vendor will be obliged to repay and, if applicable, the amount of any VAT reclaim which the Vendor will forego, if the sale of the Subject Property is completed on the closing date and the joint option to tax the sale is not exercised.	€ _____ VAT repayable € _____ Reclaim foregone		
3.2.4	Without prejudice to the Purchaser's right not to participate in the exercise of the joint option to tax, will the Vendor agree not to request the exercise of the joint option to tax?		☐	☐
	If so, specify the amount (with breakdown for each capital good on an **attached sheet** if necessary) required to compensate the Vendor for any capital goods adjustment which will apply for the Vendor and state the additional consideration which the Vendor would propose charging the Purchaser for not exercising such joint option.	€ _____ Additional consideration		
3.2.5	If the Vendor intends that the joint option will be exercised, state how the Vendor proposes that this exercise will be documented for record purposes?			
3.3	**Assignment/Surrender of Legacy Lease[31] – Purchaser Self Accounts for VAT** **Vendor should only answer this enquiry if the Purchaser answered "Yes" to the Purchaser Statement on VAT status number 2 at page 3.[32]**			
3.3.1	Please identify by a "Yes" or "No" answer the type of sale by reference to the following:			
(a)	assignment/surrender of a legacy lease held by the original lessee.		☐	☐
(b)	assignment/surrender of a legacy lease acquired by the Vendor by assignment prior to 1 July 2008.		☐	☐
(c)	assignment/surrender of a legacy lease acquired by the Vendor by the first assignment made after 1 July 2008		☐	☐
(d)	assignment/surrender of a lease acquired by the Vendor as the successor in title of a person who acquired the legacy lease in the manner described in (c) above.		☐	☐
3.3.2	Was the Vendor entitled or deemed to have been entitled to deduct any VAT on the acquisition or development of the Subject Property?		☐	☐
3.3.3	If the answer to enquiry 3.3.2 is "Yes", please provide now: (a) draft document specified by Section 95(9)(a) of the VAT Act containing details of the VAT due on the sale of the Subject Property and the number of intervals remaining in the adjustment period; (b) evidence to verify the "total tax incurred"; and (c) evidence to confirm the number of intervals in the adjustment period.			
3.3.4	If the answer to enquiry 3.3.2 is "No", is the Vendor requesting the Purchaser to co-operate in exercising the joint option to tax the sale in accordance with Section 94(5) as conferred by Section 95(7)(b) of the VAT Act?		☐	☐

29 The joint option to tax under Section 94(5) of the VAT Act can only be exercised where the Vendor and the Purchaser are taxable persons.
30 This is only exercisable where the Vendor is a taxable person.
31 See footnote 4.
32 Sale of legacy lease. Vendor not entitled to deduct VAT on acquisition or development of the Subject Property.

		Please mark as appropriate Yes	No
3.3.5	If the answer to enquiry 3.3.4 is "Yes", please set out the quantum of the VAT that may be recovered by the Vendor as a result of the exercise of such option.	€ _____	
3.3.6	Without prejudice to the Purchaser's position in respect of the response to enquiry 3.3.4, would the Vendor agree not to exercise the joint option to tax? If the answer is "yes", please set out the terms on an **attached sheet.**	☐	☐
3.3.7	If the answer to enquiry 3.3.4 is "Yes", the Vendor is a taxable person but is not registered for VAT and the Purchaser is willing to exercise the joint option to tax, please confirm that the Vendor will be so registered before completion and will on or prior to completion supply evidence of such registration.	☐	☐
3.4	**Let (or previously let within 20 years) Subject Property**		
3.4.1	Is any part of the Subject Property let or sublet?	☐	☐
3.4.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?	☐	☐
3.4.2	If the answer to either enquiry 3.4.1 or 3.4.2 is "Yes", please also answer Section 6.		

SECTION 4: TRANSFER OF BUSINESS (TOB)[33]

		Please mark as appropriate	Yes	No
4.	**IS THE SALE PART OF A TOB?**		☐	☒
4.1	If the answer to enquiry 4 is "Yes", indicate by a "Yes" or "No" answer which of the following categories of sale at (a) to (d) applies:			
(a)	Sale of partially developed property. If the answer to (a) is "Yes", please answer enquiries 4.2 and 4.6.		☐	☐
(b)	Sale of new or nearly new freehold/freehold equivalent interest.[34] If the answer to (b) is "Yes", please answer enquiries 4.3 and 4.6.		☐	☐
(c)	Sale of freehold/freehold equivalent interest in the Subject Property under TOB rules which would otherwise be exempt with a joint option to tax the Subject Property.[35] If the answer to (c) is "Yes", please answer enquiries 4.4 and 4.6.		☐	☐
(d)	Assignment or surrender of legacy lease. If the answer to (d) is "Yes", please answer enquiries 4.5 and 4.6.		☐	☐
4.2	**Partially Developed Property**			
4.2.1	Describe on an **attached sheet** the development or, if there is more than one development, each of the developments of the Subject Property relevant for VAT on the sale.			
4.2.2	Please state the amount on which VAT would be chargeable on the sale of the Subject Property in the absence of TOB relief.		€ _____	
4.3	**New or Nearly New Property**			
	(a) Development[36]			
4.3.1	Please state the date (irrespective of whether or not such date was before, on or after 1 July 2008) when the Subject Property was last developed to such an extent that in the absence of TOB Relief such development renders the sale of the Subject Property a taxable supply of immovable goods in respect of which the development has been completed.[37]			
4.3.2	Please provide a description of such development on an **attached sheet**. Please also state: (i) the cost of the development; (ii) the total tax incurred; and (iii) the non-deductible amount.[38] and furnish copies of the development contract or contracts.		 € _____ € _____ € _____	
4.3.3	If more than one such development has taken place which renders the sale of the Subject Property taxable, answer enquiry 4.3.2 for each such development on an **attached sheet.**			

33 Section 20(2)(c) of the VAT Act.

34 This includes transitional properties held on 1 July 2008 by a taxable person where the Vendor had the right to deduct VAT on the acquisition or development. The supply of these properties is taxable under the VAT Act as a supply of immovable goods without reference to the exercise of any joint option. This enquiry can only be answered in the affirmative where development (other than minor development) to a non residential property has been completed within 5 years prior to completion of the sale and the property has not been occupied for at least 2 years.

35 This includes:
(a) a transitional freehold/freehold equivalent property held from prior to 1 July 2008 which is not new or nearly new and where the Vendor had the right to deduct VAT; and
(b) a transitional freehold/freehold equivalent property held prior to 1 July 2008 where the Vendor is a taxable person and had no right to deduct VAT on the acquisition or development regardless of whether the property is new or nearly new.

36 Section 2(1) of the VAT Act defines "development" as the construction, demolition, extension, alteration or reconstruction of any building on the land, or the carrying out of any engineering or other operation in, on, over or under the land to adapt it for a materially altered use. This does not include minor development to a building which does not adapt the building for a materially altered use and the value of the works do not exceed 25% of the value of the property at the time of the sale.

37 Section 94(1) of the VAT Act.

38 Section 63(1) of the VAT Act.

		Please mark as appropriate	Yes	No
4.3.4	Was any such development a refurbishment[39]? If the answer is "Yes", please provide details on an **attached sheet.**		☐	☐
	(b) Completed[40]			
4.3.5	If such development of the Subject Property was completed in stages please describe on an **attached sheet** the stages, and specify the date of completion for each stage and the relevant costs.			
4.3.6	Produce documentary evidence of the date(s) of completion of such development(s) and if relevant, the stages.			
	(c) Occupied[41]			
4.3.7	Has the Subject Property been occupied in its entirety in accordance with appropriate planning permission since the date of such development?		☐	☐
4.3.8 (a) (b)	If the answer to enquiry 4.3.7 is "No", give particulars on an **attached sheet** of: dates, periods and other details of occupation and vacancy of the Subject Property since such completion; and the authorised use under any planning permission in respect of the Subject Property.			
4.3.9	Since completion of the most recent development which for the purposes of the VAT Act causes the sale of the Subject Property (in the absence of TOB relief) to be taxable as the supply of immovable goods, was every part of the Subject Property occupied for the purposes of the VAT Act?		☐	☐
4.3.10	Please provide details on an **attached sheet** of all occupations and non-occupations of the subject property relevant for the purposes of enquiry 4.3.9.			
	(d) Sales[42]			
4.3.11	Since the completion of the most recent development of the Subject Property which for the purposes of the VAT Act causes the sale to be taxable as the supply of immovable goods, has there been a sale or sales of the Subject Property?		☐	☐
4.3.12	If the answer to enquiry 4.3.11 is "Yes", please provide details on an **attached sheet** of each sale.			
4.3.13	Since the date of such development(s), has there been a sale or sales of the Subject Property to a "connected person" or "connected persons" within the meaning of Section 97(3) of the VAT Act?		☐	☐
4.3.14	If the answer to enquiry 4.3.13 is "Yes", please provide details on an **attached sheet** of each such sale.			

39 Section 63(1) of the VAT Act.
40 Section 94(1) of the VAT Act.
41 "Occupied" means occupied and fully in use following completion where that use is one for which planning permission for the development of the property was granted and where the Subject Property is let, occupied and fully in use by the tenant.
42 "Sale" in this section means "the transfer in substance of the right to dispose of immovable property as owner or the transfer in substance of the right to transfer immovable goods". (See VAT Act Section 19(2)).

		Please mark as appropriate Yes	No
4.4	**Freehold/Freehold Equivalent Interest which is no longer new or nearly new**		
4.4.1	Please state the date (irrespective of whether or not such date was before, on or after 1 July 2008) when the Subject Property was last developed to such an extent that any supply of the Subject Property immediately following that development was or would have been treated under the VAT Act as in force on 1 July 2008 as a taxable supply of immovable goods in respect of which the development had been completed (as defined in Section 94(1)) of the VAT Act.		
4.4.2	Please provide a description of such development on an **attached sheet**. Please also state: (i) the cost of the development; (ii) the total tax incurred; and (iii) the non-deductible amount[43], and furnish copies of the development contract or contracts.	 € _____ € _____ € _____	
4.4.3	If more than one such development has taken place which renders the sale of the Subject Property taxable, give details of each of them on an **attached sheet**.		
4.4.4	Was any such development a refurbishment[44]? If the answer is "Yes", please provide details on an **attached sheet**.	☐	☐
4.4.5	If such development of the Subject Property was completed in stages, please describe the stages on an **attached sheet**, and specify the date of completion for each stage and the relevant costs.		
4.4.6	Since the date given in the answer to enquiry 4.4.1 above, has the Subject Property or any part of it been developed or undergone works to effect or materially alter the use? If so, please provide details on an **attached sheet**.	☐	☐
	Other Capital Goods		
4.4.7	Please produce now a copy of the capital goods record written up to date for each development of the Subject Property and confirm that capital goods records for the Subject Property written up to date of completion will be handed over on completion.		

43 Section 63(1) of the VAT Act.
44 Section 63(1) of the VAT Act.

		Please mark as appropriate Yes	No
4.5	**Assignment/Surrender of Legacy Lease**[45]		
4.5.1	Was the Vendor entitled to deduct any of the VAT incurred on the acquisition or development of the lease?	☐	☐
4.5.2	State the amount on which VAT would be chargeable on the sale of the Subject Property in the absence of TOB relief.	€ _____	
4.5.3	Produce a copy of the capital goods record written up to date for the Subject Property and confirm that a capital goods record for the Subject Property written up to date of completion will be handed over on completion.		
4.6	**Let (or previously let within 20 years) Property**		
4.6.1	Is any part of the Subject Property let or sublet?	☐	☐
4.6.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?	☐	☐
4.6.3	If the answer to either enquiry 4.6.1 or 4.6.2 is "Yes", please also answer Section 6.		

45 See footnote 4.

SECTION 5: VENDOR CHARGES VAT AT THE STANDARD RATE

		Please mark as appropriate	Yes	No
5	**WILL THE VENDOR CHARGE VAT AT THE STANDARD RATE?**		☐	☒
5.1	If the answer to enquiry 5.1 is "Yes", please indicate by a "Yes" answer which one of the following categories of transaction (a) to (d) applies:-			
(a)	The sale is a surrender for a premium payable by the purchaser of an occupational lease created prior to 1 July 2008 for a term of less than 10 years where the landlord's waiver of exemption under section 7 of the VAT Act 1972 applies; or		☐	☐
(b)	The sale is a surrender for a premium payable by the purchaser of an occupational lease created after 30 June 2008 where the landlord's option to tax is in place; or		☐	☐
(c)	The sale is an assignment for a premium payable by the purchaser of an occupational lease created prior to 1 July 2008 for a term of less than 10 years where the landlord's waiver of exemption from VAT applies; or		☐	☐
(d)	The sale is an assignment for a premium payable by the purchaser of an occupational lease created after 30 June 2008 whether or not the landlord's option to tax is in place.		☐	☐
5.2	Please furnish now a draft VAT invoice showing the amount of VAT chargeable.			
5.3	Is the Subject Property assigned or surrendered the subject of a Tenant's Refurbishment?		☐	☐
5.4	If the answer to enquiry 5.3 is "Yes", please also answer Section 7.			
5.5	**Let (or previously let within 20 years) Property**			
5.5.1	Is any part of the Subject Property let or sublet?		☐	☐
5.5.2	Within the last 20 years was any part of the Subject Property let or sublet and the subject of a waiver of exemption under Section 96 of the VAT Act?		☐	☐
5.5.3	If the answer to either enquiry 5.5.1 or 5.5.2 is "Yes" please answer Section 6.			

SECTION 6[46] : SALE OF LET OR SUBLET PROPERTY (INCLUDES A PROPERTY WHICH WAS WITHIN THE LAST 20 YEARS LET OR SUBLET AND THE SUBJECT OF A WAIVER OF EXEMPTION UNDER SECTION 96 OF THE VAT ACT)

For each lease or sublease please complete a separate answer sheet for the following section.

		Please mark as appropriate	Yes	No
6.		**IS THE SUBJECT PROPERTY ITSELF THE SUBJECT OF ANY LEASE OR SUBLEASE OR SINCE ITS ACQUISITION, WAS IT LET AT ANY TIME WITHIN THE LAST 20 YEARS?**	☐	☒
		If the answer to enquiry 6 is "No", proceed to Section 7.		
6.1		If the answer to enquiry 6 is "Yes", please confirm in respect of the lease or sublease:-		
	(a)	the name and address of the [current] lessee/sublessee;		
	(b)	the business carried on by the [current] lessee/sublessee;		
	(c)	the date of creation of the lease or sublease;		
	(d)	the date of expiry of the leasehold term.		
6.2.1	(a)	Was VAT charged or deemed to have been charged on the grant of the lease?;	☐	☐
	(b)	Was VAT charged on the rent?	☐	☐
		If the answer to both of these enquiries is "No", proceed to Section 7.		
6.2.2		If the answer to either of enquiries 6.2.1 (a) or (b) is "Yes", please confirm by a "Yes" or "No" answer which one of the three following descriptions applies to the lease or the sublease		
		The lease or sublease in question is:-		
	(a)	A legacy lease[47]; If the answer is "Yes" please answer enquiries 6.3 and 6.6.	☐	☐
	(b)	A lease subject to Vendor's waiver of exemption; If the answer is "Yes" please answer enquiries 6.4 and 6.6.	☐	☐
	(c)	A lease subject to Vendor's option to tax. If the answer is "Yes" please answer enquiries 6.5 and 6.6	☐	☐
6.3		**Legacy Lease**		
6.3.1		State the VAT charged (if any) or which would have been charged except for the operation of Section 4A of the Value Added Tax Act 1972 on the creation of the lease.	€ _____	
6.3.2		State the expiration date in respect of the lease of the period specified in Section 95(5) of the VAT Act.		
6.3.3		Please provide now a copy of the relevant Section 4B Certificate issued under Section 4A of the Value Added Tax Act 1972.		

46 The purpose of this section is to clarify the application of VAT to a let or previously let or sublet subject property.
47 See footnote 4.

		Please mark as appropriate Yes	No
6.4	**Waiver of Exemption**		
6.4.1	Please provide now copy documents to show that the tenant is liable to pay VAT in addition to the rent under the terms of the lease.		
6.4.2	Does the sale of the Subject Property result in a cancellation of a waiver of exemption made by the Vendor under Section 96 of the VAT Act?[48]	☐	☐
6.4.3	Was any such waiver of exemption previously cancelled in respect of any letting of the Subject Property?	☐	☐
6.4.4	Does the fact that any such cancellation of a waiver has occurred or will occur impact on the sale?	☐	☐
6.4.5	If the answer to enquiry 6.4.2, 6.4.3 or 6.4.4 is "Yes", please give details on an **attached sheet.**		
6.5	**Option to Tax**		
6.5.1	Is the tenant liable to pay VAT in addition to the rent under the terms of the lease?	☐	☐
6.5.2	Is the landlord's option to tax still in place in accordance with Section 97 of the VAT Act?	☐	☐
6.5.3	Please provide copy documentation showing that the landlord for the time being is entitled to exercise the landlord's option to tax in respect of the lease and that the landlord's option to tax has been exercised.		
6.6	**Refurbishment**		
6.6.1	Has any tenant of any such let property carried out any refurbishment on the let property?	☐	☐
6.6.2	If the answer to enquiry 6.6.1 is "Yes", has the landlord agreed to accept responsibility on any surrender of the Lease for any Tenant's Refurbishment?	☐	☐
	If so please give details of such 'tenant's' refurbishment on an **attached sheet.**		

48 Vendor should be aware that the cancellation of a waiver under Section 96 of the VAT Act may have an impact on the Vendor's VAT position in relation to the Subject Property.

SECTION 7: TENANT'S REFURBISHMENT[49]

		Please mark as appropriate	Yes	No
7	**HAS THE VENDOR OR PREDECESSOR IN TITLE, BEING A TENANT OF THE SUBJECT PROPERTY UNDER AN OCCUPATIONAL LEASE, CARRIED OUT A TENANT'S REFURBISHMENT OF THE SUBJECT PROPERTY OR TAKEN RESPONSIBILITY FOR A TENANT'S REFURBISHMENT?**		☐	☐
7.1	If the answer to enquiry 7 is "Yes", confirm that the Vendor was entitled to deduct all VAT incurred in relation to the/each Tenant's Refurbishment			
7.2	Is the Vendor requesting that the Purchaser agree to be responsible for all obligations in respect of each Tenant's Refurbishment?		☐	☐
7.2.1	If the Vendor is requesting that the Purchaser agree to be responsible for all obligations in respect of each Tenant's Refurbishment, please set out the quantum of the VAT which would otherwise have been payable to Revenue by the Vendor pursuant to Section 64(7)(a) of the VAT Act in the absence of the Purchaser so agreeing.		€ _____	
7.2.2	If the answer to enquiry 7.2 above is "Yes", without prejudice to the Purchaser's position on an **attached sheet** please:- (a) describe each Tenant's Refurbishment; (b) specify the adjustment period of each Tenant's Refurbishment; and in respect of each Tenant's Refurbishment, provide a copy of the capital goods record and state the form of the written agreement to be entered into by the Purchaser to enable Section 64(7) of the VAT Act to apply on the sale.			

Dated _____ **20**_____

_____

Vendor/Solicitors for Vendor

Dated _____ **20**_____

_____

Purchaser/Solicitors for Purchaser

49 This Section need only be completed where the Subject Property is an interest under an Occupational Lease. A tenant under an occupational lease who was not entitled to deduct all of the VAT incurred on the acquisition or development of a refurbishment is NOT entitled to transfer responsibility to an Assignee or Surrenderee.

PLEASE NOTE THAT WHEN COMPLETING A CONTRACT FOR SALE IT IS NECESSARY TO INSERT THE CURRENT RECOMMENDED FORMAT OF VAT SPECIAL CONDITION 3 (available at www.lawsociety.ie in the precedents section of the members' area) AMENDED AS APPROPRIATE.

1. VAT Inclusive Selling Price/ Vendor Charges no VAT/ VAT not Relevant to the Sale

Where the sale of the Subject Property is by auction or private treaty:

(a) of second-hand residential property sold by the Vendor in a private capacity;

(b) of a new residential property sold to a private Purchaser and the selling price is VAT inclusive;

(c) of a freehold/freehold equivalent interest which:
(i) is not sold as a TOB where the subject property comprises capital goods; and
(ii) is a VAT exempt sale in which the Vendor is neither requesting the Purchaser to exercise the joint option to tax nor requiring the Purchaser to pay the Vendor the amount of the Vendor's capital goods adjustment on the sale;

(d) by the assignment or surrender of an Occupational Lease which is not:
(i) a TOB comprising a legacy lease; and
(ii) a supply of a good or a service where VAT is chargeable on the sale; or

(e) of any other category of sale, not being a TOB referred to in (c)(i) or (d)(i) above, in which VAT will not be chargeable either as the supply of a good or a service;

delete Special Condition 3 entirely.

2. The Vendor Charges VAT at the Appropriate Reduced Rate (Special Condition 3.2)

Special Condition 3.2 is intended for use where the sale of the Subject Property, not being a TOB, is:

(a) by private treaty or auction of a partially developed freehold/freehold equivalent interest;

(b) by private treaty or auction of a freehold/freehold equivalent interest coupled with a building agreement;

(c) by private treaty or auction of a completed "new or nearly new" freehold/freehold equivalent interest;

(d) by private treaty only, by way of the assignment or surrender of a legacy lease to a person not specified in Section 95(8)(c) of the VAT Act[50] and which is not covered in (e) below; or

(e) by private treaty only, by way of the assignment or surrender of a legacy lease to a person

50 In other words, the Purchaser has answered "No" to Item 2 of the Purchaser's Statement on Purchaser's VAT Status. See footnote 5.

not specified in Section 95(8)(c) of the VAT Act[51] where the Vendor is a person described in Section 95(7)(b) of the VAT Act who requires the option to tax to be exercised.

In situation (a) or (b), use Special Condition 3.1, 3.2.1 and 3.11 only.

In situation (c), use Special Condition 3.1, 3.2.1, 3.2.2 and 3.11 only.

In situation (d), use Special Condition 3.1, 3.2.1, 3.2.3 and 3.11 only.

In situation (e), use Special Condition 3.1, 3.2.1, 3.2.4 and 3.11 only.

In each case, delete all other clauses in Special Condition 3.

3. The Purchaser Self Accounts for VAT at the Appropriate Reduced Rate (Special Condition 3.3) in a Private Treaty Sale

Special Condition 3.3 is intended for use where the sale of the Subject Property, not being a TOB or an auction sale, is:

(a) of a freehold/freehold equivalent interest in property, the sale of which is exempt where the Vendor (including a Vendor who is a person described in Section 95(3) of the VAT Act exercising an option under Section 94(5) of the VAT Act) requires that the Purchaser shall cooperate in the exercise of the joint option to tax the sale of the Subject Property[52];

(b) by way of the assignment or surrender of a legacy lease to a Purchaser who is a person specified in Section 95(8)(c) of the VAT Act which is not covered in (c) below;

(c) by private treaty only, by way of the assignment or surrender of a legacy lease, where the Vendor is a person described in Section 95(7)(b) of the VAT Act[53] who requires that the Purchaser, who is also a taxable person, agrees to cooperate in the exercise of the joint option to tax the sale.

In situation (a), use Special Condition 3.1, 3.3.1 and 3.11 only.

In situation (b), use Special Condition 3.1, 3.3.2 and 3.11 only, except where in addition to the sale, the Vendor requires the Purchaser to take responsibility for a Tenant's Refurbishment[54], in which case use 3.10 also.

In situation (c), use Special Condition 3.1, 3.3.3 and 3.11 only.

In each case, delete all other clauses in Special Condition 3.

4. The Purchaser pays the Vendor an amount to compensate the Vendor for the Vendor's liability to pay a Capital Goods Adjustment or to receive a Capital Goods Adjustment which arises on the sale of a Freehold/Freehold Equivalent Interest which is exempt (Special Condition 3.4)

Special Condition 3.4 is intended for use where the sale, being of a freehold/freehold equivalent interest in property, is not chargeable to VAT, but where as a result of the sale, the Vendor will

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51 Ibid.
52 Refer to paragraph 11 of this guide (below) for commentary on the exercise of the joint option.
53 The Vendor was not entitled to deduct VAT on the acquisition or development prior to 1 July 2008 of the Subject Property.
54 "Tenant's Refurbishment" means capital goods as described in Section 64(7) of the VAT Act.

suffer a capital goods adjustment and if the Vendor was only entitled to partial deductibility on the acquisition or development of the Subject Property, will be unable to reclaim a capital goods adjustment from Revenue by reason of the sale being exempt and requires the Purchaser to pay the Vendor a sum in addition to the selling price to compensate the Vendor for the amount of such capital goods adjustment or adjustments. This condition can be used in either a private treaty sale or an auction sale of an exempt property where the Vendor does not intend to exercise the joint option to tax.

After every interval in the adjustment period until the adjustment period has expired, the amount of the Vendor's liability and, if applicable, reclaim entitlement on the sale of a property comprising capital goods will reduce. The Special Condition has been drafted to provide that where there is a delay in the completion of the sale and an interval[55] passes or intervals pass, the amount payable by the Purchaser in respect of the Vendor's capital goods adjustment or adjustments will be reduced so as to conform with the Vendor's actual liability.

Use Special Condition 3.1, 3.4 and 3.11. Delete all other clauses in Special Condition 3.

Rather than use 3.1, 3.4 and 3.11 a Vendor may find it convenient to omit special condition 3 entirely and simply specify a composite selling price.

5. Sale by Auction of a Freehold/Freehold Equivalent Interest which is a Capital Good where, to preserve a VAT neutral position on the sale, the Vendor requires either to be paid an amount to cover the Vendor's Capital Goods Adjustment(s) on the sale or to have the joint option to tax exercised (Special Condition 3.5)

Special Condition 3.5 is intended for use where the sale of the Subject Property being of a freehold/freehold equivalent interest is exempt, but still comprises capital goods. Unless the joint option to tax the sale is exercised, the Vendor must account to Revenue for the capital goods adjustment which will arise for Vendor on the sale and if the Vendor was only entitled to partial deductibility on the acquisition or development of the Subject Property, the Vendor will lose the right to claim a capital goods adjustment from Revenue on the sale.

If the Purchaser is not a taxable person or does not agree to exercise the joint option to tax, the Vendor will generally wish to be compensated by the Purchaser (by way of an additional payment on completion) for the Vendor's liability to pay and if appropriate forego any capital goods adjustment. When a Vendor's solicitor is settling the conditions in an auction sale of this particular type of sale, the VAT status of the Purchaser will be uncertain. Therefore, the Vendor will generally require the Purchaser either to pay the Vendor the amount of any Vendor's capital goods adjustment or adjustments which arises on the sale or, if the Purchaser is a taxable person, to co-operate in the exercise of the joint option to tax the sale.

This condition provides that the default position is that in addition to the Purchase Price, the Purchaser will pay the Vendor the amount of the Vendor's capital goods adjustment but if the Purchaser is a taxable person, the Purchaser has the right, by notifying the Vendor prior to the closing date, to cause the joint option to tax to be exercised whereupon the Purchaser will self account for VAT on the sale.

Use Special Conditions 3.1, 3.5 and 3.11. Delete all other clauses in Special Condition 3.

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55 See definition of "interval" in Section 63 (1) of the VAT Act

Special Condition 3.5 is only appropriate for an auction sale of a freehold equivalent interest in the circumstances described above. For an auction of other classes of property see paragraphs 2 and 6.

6. Sale by Auction of Legacy Lease (Special Condition 3.6)

Special Condition 3.6 is intended for use where the sale is by auction of a legacy lease where:

(a) the Vendor is a taxable person selling to:

(i) a Purchaser who is a person who is obliged to self-account for any VAT on sale; or

(iii) a Purchaser who is not a person described in Section 95(8)(c) of the VAT Act in which case the Vendor must account for the VAT on the sale and will wish to pass on this VAT cost to the Purchaser; or

(b) the Vendor is a person described in Section 95(7)(b) of the VAT Act[56] who requires the sale to be made taxable or to be compensated in lieu for loss of a capital goods adjustment.

In situation (a) above, use Special Condition 3.1, 3.6.1 and 3.11 except where as part of the sale the Vendor requires the Purchaser to take responsibility for a Tenant's Refurbishment[57] in which case use 3.10 also.

In situation (b) above use Special Condition 3.1, 3.6.2 and 3.11.

In each case delete all other clauses in Special Condition 3.

7. On the sale of a Subject Property constituting a TOB, no VAT applies but the Vendor is required to provide certain information to the Purchaser relating to capital goods (Special Condition 3.7)

Special Condition 3.7 is intended for use in the case of a TOB. If the answer to PCVE 1 is "No" and PCVE 1.1d and PCVE 4 is "Yes", use Special Condition 3.1, 3.7 and 3.11.

8. On the assignment or surrender of an Occupational Lease (other than a Legacy Lease) for a premium paid by the Purchaser to the Vendor, the Purchaser pays the Vendor VAT at the standard rate (Special Condition 3.8)

The assignment or surrender by a Vendor, being a taxable person, of an occupational lease for a premium paid by the Purchaser is regarded not as the supply of immovable goods but rather as the supply of a service which is generally taxable at the standard rate.

VAT is chargeable on a premium paid for:

(i) the assignment of an occupational lease created on or after 1 July 2008;

(ii) the surrender of an occupational lease created on or after 1 July 2008 where the landlord's option to tax the rent was not exercised; or

(iii) the assignment of an occupational lease created prior to 1 July 2008 for a term of less

56 See footnote 50.
57 See footnote 54.

than 10 years where a waiver of exemption from VAT on letting services was exercised and is in place at the date of the assignment.

However where the occupational lease:

(a) assigned or surrendered is a legacy lease which is still in the adjustment period, the sale is taxed at the appropriate reduced rate and any premium paid is ignored;

(b) assigned or surrendered was created prior to 1 July 2008 for a term of less than 10 years and is not subject to a waiver of exemption by the landlord in respect of the rent or other consideration payable thereunder, the sale is exempt and any premium paid is ignored;

(c) assigned or surrendered is a legacy lease but the adjustment period has expired or another class of occupational lease created prior to 1 July 2008 which was not in the VAT net on 1 July 2008, the sale is exempt and any premium paid is ignored; or

(d) surrendered only, was created on or after 1 July 2008 where the landlord's option to tax has not been exercised, the sale is exempt and any premium paid is ignored.

If the answer to PCVE 1 is "Yes", the answer to PCVE 2, PCVE 3 and PCVE 4 is "No" and the answer to PCVE 5 is "Yes", use Special Condition 3.1, 3.8, 3.10 (if relevant) and 3.11. Delete all other clauses in Special Condition 3.

9. On the assignment or surrender of certain Occupational Leases (other than Legacy Leases) for a premium (reverse premium) paid by the Vendor to the Purchaser, the Vendor pays the Purchaser VAT at the standard rate (Special Condition 3.9)

The Law Society Taxation Committee understands that Revenue regard the following supplies as taxable at the standard rate:

(a) the surrender for a reverse premium by a taxable person of an occupational lease created on or after 1 July 2008 where the landlord's option to tax the lease is in place;

(b) the surrender by a taxable person for a reverse premium of an occupational lease created prior to 1 July 2008 for a term of less than 10 years where the landlord's waiver of exemption has been exercised in respect of the let property and is in place; and

(c) the assignment for a reverse premium by a taxable person of an occupational lease created on or after 1 July 2008.

In each of situations (a), (b) and (c) above use Special Condition 3.1, 3.9 and 3.11 and if, in addition to the assignment or surrender, the Vendor requires the Purchaser to accept responsibility for a Tenant's Refurbishment[58], use Special Condition 3.10 also. Delete all other clauses in Special Condition 3.

According to the best information available to the Law Society Taxation Committee, Revenue regard the following supplies as exempt:

(i) the assignment or surrender by a taxable person for a reverse premium of an occupational

58 See footnote 54.

lease for a term of 10 years or more created prior to 1 July 2008 which is not a Legacy Lease or which was such a Lease but in respect of which the adjustment period has expired.

(ii) The assignment or surrender by a taxable person of an occupational lease for a term of less than 10 years created prior to 1 July 2008 where the landlord did not waive his exemption from VAT on rent.

10. On the assignment or surrender of an Occupational Lease, the Vendor requires the Purchaser to become responsible for the tenant's capital goods (Tenant's Refurbishment[59]) of the Vendor (Special Condition 3.10)

Special Condition 3.10 is intended for use where a Vendor who was entitled to deduct all VAT incurred on the installation of a Tenant's Refurbishment wishes to oblige the Purchaser to assume responsibility for it after completion.

If the answer to PCVE 7 is "Yes", use Special Condition 3.10 in addition to the relevant Special Condition for the sale of an occupational lease.

11. Note on the Joint Option to Tax

It should be noted that a contract for sale is a Vendor's document, and in this context draft Special Condition 3.3 represents the best position for a Vendor. However, the same cannot be said as regards the position of a Purchaser.

Thus, in this context it is important that a practitioner acting for a Purchaser, on receipt from the Vendor of the draft Conditions of Sale where Special Condition 3.3 is used, also receives responses to the Pre-Contract VAT Enquiries to satisfy him/herself of the correct or best VAT treatment for his or her client.

This is illustrated in two situations.

Situation 1

VAT Special Condition 3.3 as drafted ensures that a property sale that is prima facie exempt from VAT but which is capable of being made subject to VAT by the way of a joint option to tax, is so jointly opted by agreement of both the Vendor and Purchaser, or the Purchaser agrees to pay a compensatory amount to the Vendor to cover any VAT costs. Generally speaking the option to tax will be utilised to ensure the Vendor avoids a VAT liability to Revenue, or alternatively to increase VAT recovery for the Vendor where VAT in relation to the Subject Property was previously disallowed, both being to the benefit of the Vendor.

This may well not be in the best interests of a Purchaser, and a Purchaser should be made aware that in agreeing to such a joint option there are the following implications:-

i. The Vendor may secure the advantage of avoiding a VAT liability or increasing VAT recovery;

ii. It brings an otherwise VAT exempt property into the VAT net;

59 See footnote 54.

iii. The Purchaser must monitor the use of the Subject Property for the next 20 years or until sold;

iv. The Purchaser will have an exposure to VAT costs for any VAT exempt use of the Subject Property over the next 20 years, such exposure to be met from the Purchaser's own resources;

v. If the Purchaser wants to sell at anytime in the next 20 years, in the absence of major development by him, he will have to get the purchaser from him to agree to a joint option, otherwise he will incur VAT costs; and

vi. The Purchaser has effectively created a capital good for which he must continue to maintain capital goods records.

Situation 2

This relates to the takeover of a refurbishment capital good by a landlord/assignee on surrender/assignment of an occupational lease. VAT Special Condition 3.10 as drafted provides that, where such a capital good has been created by a Vendor (tenant), the Purchaser (landlord/assignee) agrees to take same over for the purposes of the VAT Act. This mechanism will be utilised to ensure the Vendor (tenant) avoids a VAT liability to Revenue, thus it being to the benefit of the Vendor (tenant).

A refurbishment is defined as development of an existing building, etc. Development means the construction, demolition, extension, alteration or reconstruction of any building on the land, or the carrying out of any engineering or other operation in, on, over or under the land to adapt it for materially altered use, which is very wide. A tenant fit out or other works may very well fall into the definition.

This may well not be in the best interests of a Purchaser, and a Purchaser should be made aware that in agreeing to such a take over there are the following implications:-

i. The Vendor (tenant) may secure the advantage of avoiding a VAT liability;

ii. The Purchaser (landlord/assignee) must monitor the use of the refurbishment for the remainder of its Adjustment Period (possibly up to 10 years);

iii. The Purchaser (landlord/assignee) will have an exposure to VAT costs for any VAT exempt use of the Subject Property over its Adjustment Period (possibly up to 10 years), such exposure to be met from the Purchaser's own resources; and

iv. The Purchaser (landlord/assignee) steps into the Vendor's (tenant's) shoes for the remainder of the Adjustment Period, and any VAT costs due to exempt use would be in effect a claw back of VAT recovered by the Vendor (tenant).