



*Indirect Taxation
January Newsletter
Issue 01 /2018*

***Value Added Tax (VAT) on Building Land – Clarifications
issued by the Cyprus Tax Department***

Further to our November's Newsletter 12/2017, in which we have analysed the recent changes in the VAT Legislation in respect to the imposition of VAT on building land (hereafter 'New Law'), we would like to inform you that the Cyprus Tax Department has issued on the 29th of December 2017 the Circular 219-VAT and on the 2nd of January 2018 the Circular 220-VAT, providing some important clarification in relation with the implementation of the New Law.

We would like to remind that the New Law introduced the following amendments:

1. Imposition of VAT at the standard rate of 19% on the sale of building land as from **2 January 2018**.
2. Application of Reverse Charge mechanism on VAT taxable supplies of land and property under loan restructuring and/or force-sale arrangement as from **2 January 2018 up to 31 December 2019**.
3. Imposition of VAT at the standard rate of 19% on the rental of premises used in business as from **13 November 2017**.

1. Imposition of VAT at the standard rate of 19% on the sale of building land.

Circular 219-VAT clarifies some of the grey areas of the New Law and provides important guidance in relation with the actual implementation of the New Law. We analyse below the most important clarifications specified in the Circular:

- VAT is imposed on the sale of **undeveloped building land** (hereafter 'UBL') from a person that **performs an economic activity** as from the 2nd of January 2018.
- UBL in accordance with the K.Δ.Π. 441/2017 is considered any land that is undeveloped and which is **NOT** within livestock area/zone, or in zone/area which is not intended to be developed such as, land under environmental protection or archaeological protection, agriculture.
- If the UBL is owned by a legal entity, the sale of the UBL is always considered taxable activity subject to VAT, irrespective of the nature of economic activity that the legal entity performs.
- The one-off sale of UBL from a physical person is not considered as performing an economic activity unless if there are evidence in place that lead to the contrary. In accordance with the circular, one-off sale is considered the sale of land one time every 7 years.
- The circular clarifies that the actual facts of each case will need to be reviewed in determining if a person performs an economic activity, and therefore whether the transaction is subject to VAT.
- The time of supply for VAT purposes is important for the purposes of the application of the new Law. In this respect it is clarified that it is not subject to VAT, the supply of UBL from a person that performs an economic activity if the land was transferred to the buyer before the 2nd of January 2018 or the

sale of land for which the sale contract was submitted to the Department of Lands and Surveys or to the Commissioner of Taxation before the 2nd of January 2018.

2. Reverse Charge rules on supply of land and property under loan restructuring and/or force-sale arrangement:

Circular 219-VAT provides that when the transfer of the building land is performed by the borrower in the course of a loan restructuring or under force transfer conditions, the specific transaction is a VAT taxable transaction by the recipient of the building land (i.e. the credit institution), under the reverse charge rules provided that the recipient receives the building land in the course of performing or furtherance of its business irrespective if those are capital assets of the business of the recipient.

The above amendment in the VAT Law came into effect as from the 2nd of January 2018 and will remain into force (based on the current legislation) up to the 31st of December 2019.

3. Leasing/Rental of commercial premises used in business are subject VAT

Circular 220-VAT gives answers to many questions raised by all interested parties in relation with the application of the New Law. We analyse below some important clarifications specified in the Circular:

- The rental /leasing of immovable property is subject to VAT at the standard VAT rate of Cyprus if the lessee is a person subject to VAT and is using the specific property for the purpose of performing its VAT taxable business activity.
- The rental/leasing of immovable property which is used for residential purposes is still exempt from VAT.

- Subject to VAT is the leasing/renting of immovable property for which the commencement of the lease period starts on or after the **13th of November 2017**.
- The rental/leasing agreements that were in force before the 13th of November 2017, are not affected by the New Law, even if the agreement provides for automatic renewal of the rental period or for increase in the rental/easing amount unless if the initial agreement is cancelled and a new agreement is signed on or after the 13th of November 2017.
- Lessor is considered to be the owner of the immovable property or any other person that has under his possession the immovable property (e.g. under sub-leasing arrangement).
- The Lessor has the option to choose not to impose VAT on the rental/leasing fee provided that the lessor informs the Commissioner of Taxation by submitting a specific form. It is noted that if this option is exercised for a specific immovable property, it cannot be amended unless if there is a change in the ownership of the immovable property.
- The lessee should be a person which performs a VAT taxable activity or/and activity which is not taxable but gives the right of recovery of Input VAT. A lessee whose income is at least 90% taxable (or income granting right of recovery of input VAT) and 10% exempt, is considered to perform a VAT taxable activity. The lessor at the time of signing the leasing agreement should obtain the evidence required in order to confirm the taxable and exempt activities of the lessee, but has no obligation to monitor/ review the activities of the lessee after that date to ensure that the above percentages are applicable.
- The lessee has the right to claim back the full amount of VAT input paid on rent/lease payments, provided that the lessee performs VAT taxable activities or activities granting right of recovery of input VAT. If the lessee performs

both taxable and exempt activities then an apportionment should be made with recovery of input VAT allocated to the taxable activities, or activities granting right of recovery of input VAT.

- The lessor has the obligation to proceed with VAT registration and charge VAT on the rent/lease payments only if the total value of its taxable supplies exceed Euro 15.600 within a 12 month period
- The lessor has the right to claim back the VAT Input paid on the development, acquisition or maintenance of the immovable property, provided that the lessor maintains the proper VAT invoices or any other related document confirming the actual delivery of the goods/provision of services in relation with the specific immovable property. This can be implemented provided that no more than 10 (ten) years have elapsed from the construction/buying of the property and if the lessor has an active contract which is under the provision of the new Law.

Copyright © K.Treppides & Co Ltd, All rights reserved.

Our mailing address is:

taxation@treppides.com www.treppides.com