

Supply of real estate – new tax exemptions

New provisions regarding tax exemptions on the supply of buildings, structures or their parts came into force 1 January 2009.

The amended VAT Act defines two categories of exemptions which can be applied to the sale of buildings, structures or their parts.

The first category deals with a general exemption regarding all such supplies except where:

- the supply is performed within the scope of the "first exploitation" or beforehand,
- the period between the date of supply and the date of "first exploitation" is shorter than 2 years.

„First exploitation" is defined in the new law as the release (within the scope of taxable activities) of buildings, structures or their parts after their completion or improvement (where improvement costs are equal to at least 30 per cent of the initial value of the property) to the first buyer or occupier. This category of exemption is optional for taxpayers. Consequently, if both parties to the transaction jointly decide not to apply the exemption, the transaction will be subject to VAT. To waive the right to the exemption, an application must be submitted to the Head of the tax office of the buyer. Moreover, both the seller and the buyer should be active VAT taxpayers.

The second category of exemption relates to the supply of buildings, structures or their parts which do not fall under the scope of the first exemption.

The application of this exemption is possible where the seller of the properties being sold:

- was not previously entitled to deduct input VAT incurred on the properties,
- did not incur expenses on improvement of the properties on which he could deduct input VAT or the expenses incurred were lower than 30 per cent of the initial value of the property.

However, even if the improvement expenses exceeded the 30 per cent limit, the exemption can still apply provided the improved properties were used by the seller for purposes of taxable activities for at least 5 years. The second exemption unlike the first one is not optional i.e. the parties to the transaction have to apply it.

It is worth mentioning, that starting 1 January 2009, the definition of used goods was also amended and no longer includes buildings, structures or their parts. Previously, the supply of such properties by taxpayers not entitled to deduction of input VAT was exempt from VAT provided the supply took place more than 5 years after the property was completed. Under the new provisions this exemption no longer exists.

In general, the new exemptions will not apply to the supply of buildings, structures or their parts, where:

- properties are relatively new or recently improved,
- the supplier was entitled to deduction of input VAT incurred on the purchase of such properties.

Any transaction involving the sale or acquisition of buildings, structures or their parts should be thoroughly analyzed beforehand in order to establish what VAT savings could be gained by each party to the transaction.

In particular, it will be worth verifying:

- whether the seller was entitled to deduct the input VAT incurred on the purchase of property,
- what the time period is between the date of purchase and sale of property,
- what is the value of any improvements made.

If you would like to discuss the above issues in detail or receive additional information on the new amendments and our services, please contact the below members of KPMG team who specialize in real estate issues.

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