

Changes of real estate VAT in 2015

As every year, the government prepared a number of changes concerning VAT which were supposed to take effect in January 2015. The proposed changes intended to modify the application of VAT in the area of real estate, in particular significantly extend the definition of „construction plots“ whose transfer is subject to VAT. However, the Senate rejected the proposed changes to the VAT Act and returned the bill to the Chamber of Deputies with amendments, which postponed the effect of most of the changes applicable to VAT for one year (to 1 January 2016). The Chamber went on to approve the law amending the VAT Act in the wording proposed by the Senate on 22 December, the law was signed by the President on the same date and on the last day of 2014 it was promulgated in the Collection of Laws.

What is changing in real estate in 2015?

Due to the legislative activity of the Senate, 2015 has brought only a minimum of changes concerning real estate VAT.

One of the main changes concerns the method to calculate floor area in social housing buildings (i.e. flats and family homes). The floor area shall from now on be determined as the total area of the enclosed living space. That means that the area built-up by interior dividing walls shall also be included in the total limit of 120 m² for flats and 350 m² for houses as opposed to the floor area of basements and storerooms which are not part of the living space (which are located separately in the building). Under certain circumstances, social housing projects close to these limits, designed and constructed under legislation applicable before 31 December 2014, which are to be sold in 2015, may be transferred from the first reduced VAT rate of 15% to the basic VAT rate of 21%. The burden of proof is naturally with the seller.

Following the terminology of the new Civil Code, the VAT Act ceases to use the term „appurtenances“ of a building or a flat. This institution is replaced by the notion that social housing constructions now also include “constructions which are intended to serve the use of the apartment building or family home and (simultaneously) are built upon land which creates one working unit with the construction of the social housing apartment building or family home.”

Although there will be minimal practical changes in the application of the first reduced rate of VAT with regards to „appurtenances“, the VAT regulation gradually starts using the term „a plot of land which creates one working unit with the construction.“ The importance of this term in the area of real estate VAT shall increase dramatically in 2016 and it is therefore advisable to get familiar with it. A plot of land which creates one working unit with the construction firmly connected to the ground is for the purposes of VAT understood as a plot of land serving the use of the construction firmly connected to the ground, performing the functions of such a construction or used together with the construction (constructions do not include engineering grids owned by a person different from the owner of the land).

From 2015, it is also possible to adjust the tax basis within 3 years from the hand-over of the complete work, if the work has been delivered in parts. It will therefore be possible to adjust the VAT deduction for partial deliveries older than 3 years if they are for example subject to defects claims.

What was postponed to 2016?

The effect of the new provisions of Sec. 56 and 56a, which provide for the basic principles of VAT application in the area of transfer and lease of real estate, was postponed to 1 January 2016. The reason is mainly to provide a sufficient time to the parties concerned to prepare for the application of the legislative changes.

The new wording of the provisions concerned in particular extends the definition of construction land always subjected to VAT to include the following cases:

- the construction permit or construction consent has not (yet) been issued, and
- a construction firmly connected to ground is to be built on the land and
 - construction works or administrative steps intended for the realization of the construction have been taken or
 - construction works aiming at the realization of the construction are or have been performed on adjoining plots of land.

From 2016 on, most transfers of land which is objectively and feasibly intended for construction should in principal be subjected to VAT.

In addition, the concept of a plot of land making a unit with the construction (i.e. a plot adjacent to the construction) is to change with regards to VAT applicable to transfers of built-up land. The current approach of the tax administration, which defines a plot of land by a parcel number on which the construction has been built up shall be from 1 January 2016 at latest replaced by the so-called functional definition which means that for the purposes of VAT it will be necessary to ascertain what proportion of the transferred land has been built-up regardless of the division of parcels registered in the Land Registry.

Moreover, taxpayers shall be given the option to subject to tax transfers of undeveloped land which are generally exempted from VAT. If real estate is transferred between VAT payers, the option will be conditioned by the consent of the buyer. Where VAT is to be paid due to the taxpayer using this option, the regime generally applicable to transfers of tax liability shall apply.

Considering the aforementioned changes, it is advisable to pay attention to collection and archiving of evidence, which may be used in order to justify the chosen VAT regime in any potential disputes with the tax administration.

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