Updated FAQ on the temporary 6% VAT-rate for demolition and reconstruction

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The tax authorities published a new FAQ with some clarifications regarding the temporary favourable VAT-regime for demolition and reconstruction. This FAQ complements a previously published circular letter on this subject (circular letter n° 2020/C/18) and includes the complementary FAQ involving specific cases with property developers.

Both documents reflect the tax authorities' current view on this temporary arrangement. The most important clarifications are briefly discussed below.

The purchase of a unit in an assisted living facility unit

The tax authorities clarify that, if all conditions are met, the sale of a unit in an assisted living facility by a property developer can also fall in scope of the temporary VAT regime. Also here, the buyer will have to occupy the building himself for his own use. In practice, this will lead to a circular lease between the buyer (in his capacity as an "elderly person") and the management body.

What should be considered as “demolition”?

It is emphasised once again that a building must be completely demolished in order to fall in scope of the 6% VAT regime. It is not sufficient to partially demolish a multi-layered building to then (further) build on it.

However, it is not required that all buildings on an existing plot are demolished as long as the demolished buildings are significant, also in relation to the newly constructed dwelling.

Reconstruction on adjacent plots

If a building is to be constructed on different cadastral parcels of which only one was previously built on, more than half of the new building must be located on the previously built-on parcel. If this is not the case, the reduced VAT rate of 6% cannot be applied. In addition, a cadastral merger of the two parcels before demolition is insufficient to argue that the demolition and reconstruction have taken place on the same parcel.

When do different buildings qualify as “one building”?

It is important to know whether several residential blocks realised within a real estate project can be considered as one building. In this respect, the tax authorities uphold the basic principle that each residential block must be regarded as separate. A mere physical connection between the residential blocks is insufficient to consider them as a single building. A basic deed which shows that the land and the access roads to the site are common is on itself also insufficient.

However, the tax authorities do clarify in this respect that there is a single building if there is a common underground cellar and/or garage with a continuous and permanent passage between the underground spaces, as well as the presence of common facilities that relate to all the residential blocks (e.g. stairs or lifts that are accessible to all residents, common entrances, common utilities and technical rooms). If these conditions are not met, each residential block should be considered as a separate building.

Demolition and reconstruction by the same person

This new FAQ includes the specific FAQ deemed to clarify the regime when property developers are involved.

In this respect, in case the landowner initially grants a right in rem (e.g. building right or long-term lease right) to the property developer, the latter can be considered as the person carrying out the demolition and the reconstruction by virtue of its right in rem.

Furthermore, the tax authorities consider the condition as deemed to be met when, prior to the granting of the right in rem, or in the context of the right in rem granted on the land in its future state after demolition, the property developer carries out the demolition on behalf of the landowner. In other words, even if the demolition and reconstruction are not carried out by the same person (i.e. the demolition is carried out by the property developer on behalf of the landowner) the tax authorities consider that the regime can be applied to the extent that the property developer performs the demolition itself or through its subcontractors.

Shared construction management is allowed

The previously published circular letter n° 2020/C/18 already provided an administrative

tolerance in case the demolition was carried out by the landowner and the reconstruction was carried out by the building owner.

The tax authorities now also accept shared construction management. In this case, the landowner grants a partial building lease right to a building developer and thereby reserves a part of the land and the new building or flat connected to it. In this case, the developer will, on the one hand, act as the owner of the residential units intended for sale to third parties and, on the other hand, act as the contractor for the demolition and reconstruction of the residential units reserved for the landowner. The tax authorities accept that in such a case, the reduced VAT rate of 6% can apply both to the sale of the housing units to third parties as well as to the construction works on the reserved parts. Both parties are considered to be demolishing a building and constructing a new dwelling.

Completion of a building after purchase or occupation: can the reduced VAT rate apply?

The answer depends on the subsection of the arrangement that is applied.

If a builder has carried out the demolition and reconstruction himself and wants to carry out additional work after the dwelling has been put into use, the reduced VAT rate can still apply to the additional work (f.i. tiling the kitchen), provided that this work is carried out between 1 January 2021 and 31 December 2022 and at the latest on 31 December of the year in which the dwelling was first put into use.

The situation is different if the reduced rate is applied to the sale of a new home. In such a case, the buyer cannot carry out the subsequent finishing work at the reduced rate, as the buyer does not qualify as the “builder” of the dwelling. The normal VAT rate of 21% will be applicable unless it is the seller/constructor who is responsible for the further finishing of the building.

Transfer of undivided shares of a residence that is purchased/occupied under the beneficial regime within the regularisation period: revision required!

If a dwelling was bought or built with the application of the reduced VAT rate, the owner has to use the building as his/her own and only residence for 5 years. If not (for instance when selling the property), he/she loses the right to the reduced rate and regularisation is required. The owner must then pay the difference between 6% and 21% to the Treasury. This is the case, for example, if the owner sells half of his property to his spouse or gives part of the property to his children.

If the owner sells with VAT, the VAT paid on the demolition/reconstruction can be recovered. But if it is a sale with registration duties, this is not possible.

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