

When is a renovated immovable property a new building for VAT purposes?

For VAT purposes, a 'new' building is treated differently than an 'old' building. That is why it is important to know whether a building is 'old' or 'new'. For a recently erected building it is not so difficult. For existing buildings which are being rebuild or renovated, the answer is often more difficult.

Old versus new: advantages and disadvantages

The big advantages of an 'old' building which is older than five years, is that immovable work on the building can be subject to the reduced VAT rate (6%) instead of the standard VAT rate of 21% (as from 2016 a building should be older than 10 years to benefit from the 6% VAT rate).

The big advantages of a 'new' building is that it can be sold with VAT. The VAT paid during erecting or purchasing of the building can be deducted. Also the buyer can, when he is a VAT payer using the building for its economic activity, deduct the VAT.

A building is new when ...

As mentioned above it is not difficult to determine if a building is 'new' when it was recently built. The rules to do so are mentioned explicitly in the law: a building is new until ultimately 31 December of the second year following the year of the first occupation of the building.

Example 1

Imagine that a building is finished in May 2014. The owners occupy it for the first time on 14 June 2014. Consequently the building is 'new' until 31 December 2016.

A renovated building is new if ...

It is another case when an existing building is rebuild. Rebuilding can be so radical that the result is rather a new building than a changed old building. The question then arises as from when rebuilding is so fundamental that it becomes a new building.

This issue becomes even more complicated, since the answer to the question whether a building is old/new differs whether it concerns (i) the application or not of the reduced VAT rate or (ii) whether the sale of the building should be made with VAT or not. Other criteria are used to answer these questions.

Application of the reduced VAT rate (6%): essential structural elements of the existing building remain

Starting point is that an existing building can be thoroughly rebuild and still keeps its status as 'old' building. The rebuilding should in this case be supported by the existing essential structural elements of the building, e.g. the outside walls.

Rebuilding means both the actual rebuilding as well as the expansion of a building. Expansion is possible by e.g. enlarging existing spaces or adding new spaces. It is not because a building is expanded, that it becomes new. The entire building remains 'old' (1) as long as the surface of the old part is larger than half of the building after the works and (2) the newly added elements cannot function apart from the old part. If too much space is added, a new building occurs. Which is logical.

Example 2

A house has a surface of 100 square metres. The residents decide to expand the house significantly, by a.o. enlarging the living room and building an extra bedroom and a new kitchen:

- after the works the house has a surface of 170 square metres: the surface before the works (100 square metres) is more than half of the total surface after the works ($170/2 = 85$ square metres) - the building remains old, reduced VAT rate of 6% is applicable;
- after the works the house has a surface of 210 square metres: the surface before the works (100 square metres) is less than half of the total surface after the works ($210/2 = 105$ square metres) - the building is considered 'new', standard VAT rate of 21% is applicable.

Example 3

The owner of a building builds a small annex to this building. This annex has its own utilities (electricity, heating, water) and an own entrance, so it is separately accessible. The building can function independently. This annex is a 'new' building. The building works are subject to the standard VAT rate of 21%.

The same goes for building new apartments in an apartment building.

Sale with VAT or not: significant changes or the price of the renovations exceeds 60% of the value of the building

Also here a building is considered new if the essential structural elements (foundations and retaining walls) are affected. If the building obtained an increased cadastral income following these works, it can be sold as 'new' with VAT. This hypothesis joins the criteria which are used to judge whether the works are subject to 6% or 21%.

A building can also in another hypothesis be sold with VAT. This second criterion is NOT used to judge whether the works are subject to 6% or 21%. This criterion is used when it is difficult to judge whether the works are significant enough to conclude to a 'new' building. The tax authorities will then simply look at the price of the works.

If the cost price (exclusive VAT) of the works amounts to minimum 60% of the sales value of the building after the works (the value of the land excluded), it is considered as 'new'.

Example 4

We refer back to example 2 of the couple expanding their house. In the first hypothesis: expansion of 100 to 170 square metres, the building remains 'old' for judging whether the works were subject to 6% VAT. Imagine that the works cost 150.000€. Upon completion of the works the sales value of the house (excluding land) amounts to 220.000€. The value of the works is higher than 60% of the sales value ($60\% \text{ of } 220.000\text{€} = 132.000\text{€}$). The couple can sell the house with VAT and deduct the VAT paid on the renovation works.

So a building can be old and new at the same time

On the basis of these a building can be 'old', so the renovation works can be done at 6%, because the changes were not so significant (e.g. the foundations and retaining walls were kept in place), but at the same time can be sold as 'new' with VAT because the price of the renovation works exceeded 60% of the sales value of the building.

