

Do you sell immovable property: maybe you will become a coincidental VAT payer

When selling immovable property, in principle stamp duties are due. In some cases the seller can opt to sell under VAT. We will explain which conditions have to be fulfilled and analyze the advantages and disadvantages.

You can sell a new building with VAT

As a general principle, the supply of immovable property, e.g. a building, is VAT exempt (however stamp duties are due).

Still you can sell a building under VAT if:

- the building is new;
- you did acquire the building yourself with VAT;
- you are considered as a coincidental VAT payer;
- your economical activity does not include the supply of immovable property.

The following definitions applies for VAT purposes.

A building is every construction which is connected with the ground: also a prefab building which cannot be easily moved or disassembled is considered, the construction should not be connected inextricably with the ground.

A new building is a building which is supplied ultimately on 31 December of the second year following the first occupation or taking possession of the building. The occupation is a matter of fact. Example: if a building was first occupied on 17 April 2012 (year of the first occupation is 2012), the building will be new until 31 December 2014.

If an old building undergoes significant changes, e.g. by extension, alteration or renovation, the building can be considered again as new: if the surface of the old part is more than half of the total surface after the works, the building remains however old. The extension should in other words be significant in order to have a new building.

Option

If you comply with the above conditions, you can opt to sell the immovable property with VAT.

Which is the advantages of selling with VAT?

You can deduct the VAT which you have paid when acquiring or building the immovable property.

Example

In 2011 a new house was build for 300.000€, on which you paid 63.000€ VAT. In the course of 2013 you decide to sell the house with VAT (the house is still new following the VAT legislation). You sell the house for 340.000€ plus 71.400€ VAT. You will pay to the Treasury the difference between the VAT charged to your buyer (71.400€) and the VAT you have paid in 2011 to the contractor which build your house (63.000€) = 71.400€ - 63.000€ = 8.400€.

You did recuperate the VAT which you paid in the past in full, while the Treasury did receive the VAT (71.400€) on the total price of 340.000€, namely 63.000€ in 2011 and 8.100€ at the time of the sale in 2013. The total VAT cost is consequently borne by the buyer: however in most cases he will have right to deduct the VAT because e.g. he will use the immovable property professionally (for his activity subject to VAT).

Formalities to comply with

The option to sell immovable property with VAT trigger some administrative formalities.

You should make a declaration with the competent VAT office that you want to make the supply with VAT. You should use the form 104.1. This form is filled out in twofold, with one copy for you (with receipt) and one for the tax authorities. You should also inform the buyer of your intention to sell with VAT.

You should issue an invoice to the buyer.

You should file a VAT return. This return is made up in threefold, with one copy for you (with receipt).

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