

VATR 73

Facts

A private limited company – (Z Ltd) which is in the process of being incorporated in Mauritius proposes to operate a property project comprising of commercial and residential premises, within the framework of the Real Estate Scheme (RES) under the Investment Promotion Act.

The RES project would be developed by a property developer (Y Ltd), and the residential units would be sold by that developer to buyers – mostly non-citizens, who may be either individuals or institutional investors. The owners of the RES units not wishing to personally reside in their property would then each rent their unit to Z Ltd under long-term letting (11 years) contracts. Z Ltd would thereafter rent the units to various clients, whether foreign-resident or Mauritian, under short-term letting contracts.

It is not expected that the owners of the RES units nor the foreign or Mauritian clients would be VAT registered. However, Z Ltd would be VAT registered.

Point at issue

1. Whether the rent from abroad charged by Z Ltd to each foreign client would be liable to VAT at zero rate?
2. Whether the rent from Mauritius charged by Z Ltd to each client (Mauritian or foreign) for residential letting would be liable to VAT at the standard rate?
3. Whether the rent charged by Z Ltd for commercial letting of commercial premises would be liable to VAT at the ordinary rate?
4. Whether the rent charged by the owner of the RES unit (as lessor) to Z Ltd (the lessee) would be liable to VAT, assuming that the said owner would derive annual turnover below the registration threshold in respect of this activity?
5. In the event that the Z Ltd's activities are subject to distinct VAT regimes (zero-rated, exempt, ordinary rate), can those various activities all be operated within a single company in a fiscally neutral manner? Whether those activities are operated within a single Operator company or within two separate Operator companies (for instance, one company focussing in the zero-rated activity, and the other on the activity liable to VAT at the ordinary rate), the VAT treatment of the relevant activities will not differ.

Ruling

On the basis of facts given above, it is confirmed that:

1. the rent charged by Z Ltd to each foreign client will be for services which are utilised in Mauritius and the foreign client will be in Mauritius at the time the services are performed. The rent will therefore not qualify as zero-rated supply under section 11 of the VAT Act.
2. as the building will not be used predominantly as a place of residence, the rent charged by Z Ltd to each client whether Mauritian or foreign, will be subject to VAT at standard rate irrespective of the period of stay.
3. the rent charged for commercial letting of the commercial premises is a taxable supply and will therefore be subject to VAT at the standard rate.
4. where the rental charged by the owner of the RES unit (as lessor) exceeds the threshold for VAT registration, that is Rs 6 million per annum, he will be liable to compulsorily register for VAT.
5. for VAT purposes, registration of Z Ltd covers all its activities. The supplies would be accounted for in accordance with the provisions of the VAT Act with respect to the different supplies made (standard-rated, zero-rated and exempt).