

## **VATR 29**

### **Facts**

X is a private limited company incorporated and domiciled in Mauritius, and is engaged in property development for the benefit of companies within a Group. It holds an appropriate licence as land promoter and property developer from the relevant authority. Y is another private limited company incorporated and domiciled in Mauritius and operates a chain of supermarkets throughout the island. X and Y are wholly owned subsidiaries of Z and are both VAT registered.

All land and buildings belonging to X are presently rented to Y under an operating lease. The Management of X is considering the sale of all X's properties to Y. The capital expenditure incurred by Y will be exclusively incurred in the production of gross income.

### **Points in issue**

1. Whether, under the VAT Act 1998, the disposal of the land and buildings by X should be treated in accordance with :
  - (i) Section 21 (7) (a) of the Act; or
  - (ii) item 48 (b) of the First Schedule to the Act ?
  
2. In case the issue at 1 above is treated in accordance with item 48 (b) of the First Schedule to the Act, whether-
  - a. VAT will be charged on the portion of the property related to land?
  - b. Y will be allowed to deduct from its output tax the input tax charged on the invoice to be issued by X?
  - c. input tax suffered by X and Y in respect of such expenses as notary, property valuer and other professional fees directly related to this transaction will be deductible against their output tax ?

## **Ruling**

- a. It is confirmed that the sale of land and buildings is subject to VAT in view of item 48 (b) of the First Schedule to the VAT Act which reads as follows: "for any other purposes except land with any building, building or part of a building, apartment, flat or tenement together with any interest in or right over land, sold or transferred by a VAT registered property developer to a VAT registered person.
- b.
  - It is confirmed that VAT will be charged on the portion of the property related to land, since the exemption provided under item 47 of the First Schedule, i.e. " the grant, assignment or surrender of any interest in or right over land does not apply in this case as land with any building sold or transferred by a VAT registered property developer to a VAT registered person falls under the 'exception' provision under item 48 (b) of the above Schedule.
  - It is confirmed that since Y makes both taxable supplies and exempt supplies, it will be allowed to deduct from its output tax the input tax charged on the invoice that will be issued by X, on the purchase of immovable properties which will form part of its fixed assets, in accordance with the provisions of Section 21 (3) (b) of the Act, i.e. in the proportion of the value of taxable supplies to total turnover.
  - It is confirmed that both X and Y will be allowed to claim the input tax suffered in respect of expenses such as notary, property valuer and other professional fees directly related to this transaction in accordance with the provisions of Section 21 of the Act; and, where applicable, the credit for input tax will be restricted as provided in Section 21 (3) (b) of the Act.