

VATR 35 (Govt Gazette No. 54 of 05 June 2010)

Facts

A Limited (the Company) is a domestic company which is considering to enter into a sixty-year commercial lease agreement for a number of apartments with B Limited, another company incorporated in Mauritius, for approximately USD 4m plus VAT, payable upfront. A Limited will thereafter be engaged in subleasing business. Both companies will be registered for VAT. As of date, however, there is no transaction yet between the two companies.

Points in issue

Whether it can be confirmed that -

- a. the Company will be entitled to claim a refund of the VAT payable on the USD 4m in respect of the commercial lease ;
- b. once the Company registers for VAT, then VAT is chargeable on all subleases, irrespective of whether these subleases are short-term or long-term(exceeding 90 days).

Ruling

- a) Section 24 (1) of the VAT Act reads as follows: "*Where a registered person submits a return under section 22 and the excess amount includes input tax amounting to more than 100,000 rupees or such other amount as may be prescribed, on capital goods being building or structure (including extension and renovation), plant machinery or equipment, of a capital nature, the registered person may, in that return make a claim to the Director-General for a repayment of the amount of input tax allowable in respect of those capital goods.*

Also, item 11 of the Third Schedule to the Act states that the "*leasing of, or other grant of the right to use, goods is a supply of services.*

It is clear that the "supply that would be made by the Company would in fact be a supply of services and not a supply of "*capital goods*. It cannot therefore be confirmed in the circumstance that the Company would be entitled to claim "*repayment of the input tax* payable on the lease.

- b) Being given that A Ltd cannot use the building predominately as a place of residence, the subleases will constitute taxable supplies irrespective of their duration.