

VATR 43 (Govt Gazette No.55 of 26 May 2012)

Facts

P Limited (the Company) is a property developer registered for VAT, and is the owner of land of some *xx* square metres intended for the development of "*Project A*" which will comprise of the following:

1. an IRS project of some K units to be developed by the Company and implemented in two phases, a first phase of Y units and a second phase of Z units;
2. construction of a 100-room hotel together with some n "*forced rental pool*" apartments under an RES scheme to be developed by G Limited;
3. a commercial centre to be built and operated by G Limited.

The breakdown of the surface area and percentage is as follows:

Surface Area

	<i>(m²)</i>	<i>Percentage (%)</i>
▪ Under a Real Estate Scheme (RES)	x	11
▪ For the operation of a Hotel	x	10
▪ Commercial Centre	x	9
▪ Under an Integrated Resort Scheme	x	70
Total	XX	100

The company will carry out all required infrastructural works on the land prior to its sale. The infrastructural works will include construction of roads, bridges and canals as well as water, electricity and sewer services in respect of the project.

Out of the Y units to be built and sold by the Company under the first phase of the IRS scheme, 13 units will be sold under a "*forced rental pool*" agreement with G Limited. The buyers of these units will apply for VAT registration on the grounds that they will be making taxable supplies. Under the

agreement, the owners of the units will be entitled to occupy the unit for their personal use and to revenue from the rental pool, in addition to having access to hotel facilities. The units will be maintained by a hotel operator during the owners' absence.

There exists a possibility that the second phase of the project would not materialize.

Point at Issue

1. Whether the Company can recover all VAT suffered on the building cost of the 13 units referred to above?
2. Whether VAT suffered on the infrastructure provided by the Company for its own benefit and that of G Limited can be recovered, bearing in mind that both the Company and G Limited will have taxable supplies as follows:
 - a. the Company, in respect of the construction and sale of the 13 units;
 - b. G Limited, in respect of hotel operation and the commercial centre.
3. If the answer to 2 above is in the affirmative, the formula that will be used to calculate the VAT that can be recovered.
4. In the event phase 2 of the project does not materialize, how will it impact upon the formula referred to above?

Ruling

On the basis of the facts given, it is noted that the company will be making the following supplies:

1. Supply of 13 IRS villas to potential VAT registered persons.
2. Supply of a number of IRS villas, not yet quantified, to other persons.
3. Supply of developed land to G Ltd for the construction of a hotel and apartments, and a commercial centre.

Our rulings in respect of the issues raised are as follows:-

1. The construction and sale of an immovable property by a VAT registered property developer to a VAT registered person constitutes a taxable supply in accordance with the exception provision of item 48(b) of the First Schedule to the VAT Act. On the basis of facts provided, it is therefore confirmed that the Company can recover the input VAT suffered on the building cost of the 13 units it intends to construct and sell to potential buyers who will be registered for VAT, subject to the limitations of Section 21(2).
2. VAT on the infrastructure relating to the 13 units as per supply (1) above will be allowed as input tax credit. On the other hand, since the sale of the IRS villas as per supply (2) above and the sale of land to G Ltd as per supply (3) above are exempt supplies by virtue of item 48(b) and item 47 respectively, VAT suffered on the infrastructure in relation thereto will not be allowed as input tax credit.
3. Since the Company will make both taxable supplies and exempt supplies, it will be allowed to take credit for input tax in respect of the VAT suffered on infrastructure costs in the proportion of the value of the taxable supplies to the total turnover, in accordance with the provisions of Section 21 (3) (b) of the Act.

However, Section 21 (3)(d) of the Act also allows a registered person to make an application to the Director-General for consideration of an alternative basis of apportionment of input tax, in case the apportionment under Section 21 (3) (b) is not fair and reasonable.
4. Being given that the turnover of the exempt supplies will be known only at a later stage, the input tax credit that will be initially calculated will have to be reviewed when the project becomes certain in case the turnover basis is used.

Similarly, an application for an alternative basis will have to cater for review of the figures when the supplies become known.

Please note that claims for repayment will be entertained only when the supplies can be reasonably ascertained.