

## **VATR 63 (Govt Gazette No.44 of 18 May 2013)**

Notice is hereby given that VAT Ruling **VATR 30** issued by the MRA and published in the Government Gazette No. 99 of 7 November 2009 is hereby revoked as from this date and replaced by a new ruling VATR 63 as shown hereunder:

### **Facts**

The "*Syndicats de Co-propriétaires*" are associations of co-owners, governed by article 664 (and subsequent articles) of the "*code civil mauricien*" (the Mauritian Civil Code) which regulates the obligations of the co-owners in respect of the common areas and amenities in a building complex. The Syndicat de Co-propriétaires contributes to a Fund out of which expenses for the maintenance of common parts of the building are approved by an Annual General Meeting of the Syndicat de Co-propriétaires.

The Syndicats de Co-propriétaires is distinct from the Syndic which is a legal entity to which a Syndicat de Co-propriétaires may entrust the management and maintenance of the building in return for a fee.

All the expenses incurred by the Syndicats de Co-propriétaires are allocated to the different co-owners in the proportion of their thousandth or n-th share in the "*co-propriété*" (co-ownership) as may be defined in the rules of the "*co-propriété*". The allocation of expenses may be made either by special provision at the commencement of each quarter or by "*debours des frais*", i.e disbursement of actual expenses at the end of each quarter. The allocation of expenses is carried out by means of an "*appel à contribution*" or "*appel de fonds*", i.e by raising the required funds, and not by means of the issue of invoices. Additionally, in accordance with the provisions of article 664-59 of the Mauritian Civil Code, the syndicat de co-propriétaires can make claim for payment in respect of these "*appel à contribution*" or "*appel de fonds*" as follows:

- a. by advance payment from the available cash funds, as provided in the rules of the "*co-propriété*";
- b. at the commencement of each accounting period, by provision made thereafter, without prejudice to the conditions in the rules of the "*co-propriété*"; or, alternatively by decision of the general assembly;
- c. during the course of the accounting period; or
- d. by special provision made to implement the decisions of the general assembly.

No mention is made therefore of any margin or consideration whatsoever, in respect of expenses incurred or to be incurred, but only of the allocation of expenses or a provision for expenses, being given that a Syndicats de Co-propriétaires does not have to its credit any accumulated profit.

### **Points at Issue**

Whether or not a "*Syndicat de Co-propriétaires*" has the obligation to apply for compulsory registration as a registered person under the VAT Act.

### **Rulings**

Section 15 of the VAT Act provides as follows:

*"(1) Subject to the other provisions of this section, every person -*

- a. who, in the course or furtherance of his business, makes taxable supplies ; and
- b. whose turnover of taxable supplies exceeds or is likely to exceed the amount, specified in the Sixth Schedule

*shall apply to the Director-General, in such form and in such manner as may be approved by him, for compulsory registration as a registered person under the Act."*

Section 3(1)(b) of the Act defines "**business**" as to include "*any activity carried on by a person, whether or not for gains or profit, and which involves in part or in whole the supply of goods or services to other persons for a consideration*".

On the basis of facts provided, the receipt of fund by the Syndicat de Co-propriétaires does not constitute receipt in respect of a supply.

On the other hand, the services provided by the Syndic constitute a taxable supply and the Syndic therefore has the obligation to apply for compulsory registration as a registered person under the VAT Act, pursuant to Section 15 of the Act.