

## Input VAT newsletter

### Real estate changes as of 1 January 2017

16 January 2017

#### **EU regulation regarding the place of supply of services connected with immovable properties for VAT and the abolition of the obligation to register a rental agreement**

##### **Place of supply of services connected with immovable properties**

An EU Regulation adopted on 7 October 2013 makes new rules applicable as of 1 January 2017 regarding the place of supply of services connected with immovable properties.<sup>1</sup> Pursuant to Article 47 of the EU VAT Directive 2006/112, services connected with real estate property are located where the property is located. This article indicates that these services include services of expert and estate agents, hotel and similar services, and the granting of the right to use immovable property services for the preparation and coordination of on-site supervision of the construction. Despite this relatively precise definition, businesses established in another country than the immovable property have often been faced with difficulties to correctly apply it. These difficulties have led to double or nil taxation.

The regulation provides a definition of services connected to immovable properties. These services must have a sufficiently direct connection with immovable property. This condition will be met if the services are derived from an immovable property and that property makes up a constituent element of the services and is central to, and essential for, the services supplied; or if they are provided to, or directed toward, an immovable property, having as their object the legal or physical alteration of that property.

The regulation also provides a non-exhaustive list of "positive" and "negative" services. The first list includes the services that must be regarded as connected to immovable properties and are thus located and taxable in the country where the property is located, while the second list of services includes services not to be regarded as connected to immovable properties and are thus subject to the general place of supply rules. These services would therefore be located and taxable where the beneficiary is established when the latter is registered for VAT (Article 44 of the EU Directive). Conversely, the services would be located and taxable where the supplier is established when the beneficiary is not VAT registered (Article 45 of the EU VAT Directive).

This regulation is, without a doubt, a useful piece of legislation when clarifying the concept of services connected to immovable properties. We could however regret that it does not define the concept of immovable property, which might be understood differently from one member state to another. Lastly, we would like to remind you that the performance of a service connected with immovable property in another member state might imply a registration of the foreign business in this country, even if some member states have introduced so-called reverse charge rules, shifting the obligation to pay the VAT to the beneficiary of the service.

## **Abolition of the obligation to register a rental agreement**

The obligation to register rental agreements is abolished as of 1 January 2017.<sup>2</sup>

Even if it was often forgotten in practice, the Luxembourg law imposed an obligation to register any type of rental. This obligation included even rents concluded between individuals for private dwellings. The Luxembourg legislator has thus recognized the obsolescence of this rule and of its main legal effect.

It is important to remind that when a rent is voluntary registered, the 0.6 percent registration duty will remain due and that a rent for which the option for VAT has been exercised is automatically registered at the fixed rate of €12.

If you have any questions regarding the above, please do not hesitate to contact us.

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