

Practical information about the returning 5% VAT rate for flats

As it is widely known from the press, from 1 January 2021, if certain requirements are all met, the VAT rate is 5% instead of 27% for the sale of new-build flats and for the consideration for the construction services in connection with the construction of new-build flats under independent contractor agreements.

However, numerous practical questions have arisen with regard to the applicability of the reduced VAT rate.

First and foremost, an invoice with the reduced VAT rate of 5% may be issued only to a private individual buyer and/or client who is exempt from VAT.

It is often not clear to the parties whether the rules of the ordinary charge of VAT or the reverse charge of VAT are to be applied.

If the private individual chooses to be liable to VAT with regard to the new-build flat, or previously sold flats via serial transactions under the VAT act, then, in these cases, the transaction at issue **will be subject to the so-called reverse charge of VAT**, and, depending on the type of the transaction, the tax is to be declared and paid to the state by the client ordering the construction services, and/or, in the case of a sale and purchase, by **the buyer**, in which case the fact of the reverse charge must be indicated in the invoice as well.

Naturally, the 5% VAT rate is applicable in the case of the reverse charge of VAT as well, which 5% VAT is deemed to be deductible without restrictions. Consequently, the terms of the contract and the corresponding indication of the purchase price in the invoice are especially important.

Why else may this be important?

Because, from 2021, the buyer and/or the person ordering the construction may have the VAT refunded in the case of a real property sale and/or construction transaction subject to a 5% VAT rate, even if the state subsidy for families for the purchase of homes ('CSOK') was granted for the transaction, **provided that the transaction is subject to the reverse charge of VAT**, that is, the buyer of the real property and/or the client ordering the construction services is liable to VAT.

Due to this, private individuals who are not liable to VAT may consider becoming liable to VAT next year regarding the purchase of the real property, since, in this case, they may have the VAT refunded without any restrictions, regardless of whether the purchase and/or the construction is in a preferred small village and regardless of whether the state subsidy for families for the purchase of homes ('CSOK') was utilised or not.

In addition to the aforementioned, the **second most important condition** is that the transaction is subject to 5% VAT only if the first use of the real property for its intended purpose has not been commenced; or, if the first use of the real property for its intended purpose has been commenced, then a period of less than two years has passed between the official permit allowing the aforementioned becoming final or, in the case of a procedure for the acknowledgment of such use, the tacit acknowledgment of such use and the sale.



Are renovated flats subject to the reduced VAT rate?

As a general rule, **the 5% VAT rate is not applicable** in the case of the renovation of a flat **if the purpose of the real property is not modified.**

However, with reference to the answer of the National Tax and Customs Authority (NAV) provided in taxation question nr. 2016/13, **if the purpose of the real property is modified in connection with the renovation and a new procedure for the issuance of a permit allowing the use of the real property or for the acknowledgment of the use becomes necessary, that is, the commencement of a new use of the real property becomes necessary under the VAT act**, then the 5% VAT rate is applicable. For instance, if a real property which is in a bad condition and is registered as an office or a shop is renovated and re-registered as a flat, or if an unfinished flat is finished, due to which a procedure for the commencement of the use or a notification of the authority becomes necessary under the relevant legislation on construction, then the reduced VAT rate is applicable.

The **third condition** of eligibility for the reduced tax rate is that the total useful floor area of the flat constructed or to be constructed in a multi-flat residential building must not exceed 150 square meters, and the total useful floor area of the single-flat residential building must not exceed 300 square meters.

The **fourth condition** is that the reduced, 5% VAT rate is applicable if, **under the VAT act, the date of the performance of the transaction is between 1 January 2021 and 31 December 2022.** This means that only this period of time may be taken into consideration in the case of a down payment and payment by instalments as well.

As a consequence, the invoice regarding the down payment or the payment by instalments may not be issued with the 5% VAT rate before 1 January 2021 if the Parliament amends the Act with the provisions proposed in the bill. However, under the transitional provisions, the 5% VAT rate is also applicable if the date of the performance is between 1 January 2023 and 31 December 2026, provided that, in the case of construction works requiring a building permit, the building permit for the construction of the residential real property becomes final before 31 December 2022 or, in the case of construction works requiring a simple notification of the authority under the act on the development and protection of the built environment, the authority is notified on 31 December 2022 at the latest.

If you are uncertain about the performance of any of your real property transactions, please do not hesitate to contact us with your legal and/or taxation queries. All transactions can be planned, we would be delighted to assist you in finding the optimal solution.

If you are already about to purchase the property, and the sale and purchase does not require any special consultation, then please visit our new e-service website, where, for a fixed fee (which is independent of the price of the real estate), you can manage the sale of your real property any time, from anywhere, without contacting others in person, including the management of the transaction in the Land Registry.

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