

Buying land at 5% VAT is not allowed. But is it possible?

By Panayiotis Panayi

Director

Chelco VAT Ltd

One law to rule them all

It all starts with the obligation of European Union (EU) Member States (MS) to transpose and implement the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, or as is commonly referred to the 'VAT Directive' into national law. It is up to each MS as to how the VAT Directive will be transposed into national law but they are obliged through the national law to achieve the intentions and provisions of the VAT Directive within specific deadlines.

As such, the national VAT laws must be in-line with the VAT Directive and cannot deviate from what the VAT Directive provides for. It is for this reason that the European Court of Justice (ECJ) usually deals with cases where questions are brought to the ECJ to confirm whether specific parts of the national legislation are in-line with the provisions of the VAT Directive.

The VAT Directive was transposed into national law in Cyprus via the VAT Law N.95(I)/2000 as amended. And because our national law is so great and our judges on a national level have no doubts about the interpretation of the law we have never sent any VAT cases to the ECJ as a country yet. Personally I find this to be a weakness for us as a Member State as the ECJ is the top authority when it comes to law interpretation and its input can be very helpful for all involved parties (i.e. tax authorities, taxable persons, legislators) in improving our national legislation.

Reduced VAT rate on the sale of land

Reverting back to the matter at hand, we visit article 98 of the VAT Directive which provides that it is up to each MS whether to apply a reduced rate or not. However, such reduced rates are only allowed to be applied to transactions listed in Annex III of the VAT Directive.

And here is the catch. The sale of land is not listed in Annex III and as such MS are not allowed to apply a reduced VAT rate to the sale of land. So for as long as Annex III remains as is the sale of land will always be subject to the standard VAT rate applicable in each MS. In Cyprus this means that the sale of land will always be subject to 19% VAT which is currently our standard rate in force.

So the first statement to bear in mind is that the sale of land cannot be subject to a reduced VAT rate.

How can we achieve an effective reduced rate?

The imposition of VAT on the supply of land has been in place as of 02/01/2018 (although our obligation as a MS was to apply this as of 01/01/2008 as per article 383(a) of the VAT Directive). Since then there have been discussions for a way to mitigate the impact of this for individuals buying a plot of land to build their family home which bear the full burden of the imposed VAT as they are not taxable persons with a right to recover input VAT.

This is considered only fair because as per the current provisions of the Cyprus VAT Law you are allowed to apply for a reduced VAT rate of 5% when you buy or construct a new house to be used your primary residence in Cyprus. This is based on point 10a of Annex III of the VAT Directive which allows a reduced VAT rate to be applied on the 'provision, construction, renovation and alteration of housing, as part of a social policy'. In Cyprus we consider it a 'social policy' to be able to apply for a reduced VAT rate when you buy a nice villa of 200 square meters by the sea for a price anything up to €4million with current prices.

Nonetheless, it only makes sense that the purchase of land for primary residence purposes should bear the same reduced VAT burden as with the construction or purchase of a primary residence. So as this is not allowed our Parliament has been discussing for quite some time putting in place a grant scheme whereby eligible applicants will be refunded 14% of the VAT incurred on the purchase of building land with the intend to erect their primary residence on that plot. So in effect at the end of the day such buyers will incur VAT at the reduced rate of 5%.

However, it is important to stress that legally the transaction will still be subject to the standard VAT rate of 19% and that the effective 5% will be achieved via means of a grant. The Council of Ministers voted in favor of such a grant scheme during its meeting on 05/12/2018. Now we wait for the draft law and its voting through Parliament so that we may be able to answer questions such as:

- What will be the criteria to be allowed to apply for the grant?
- Will the grant scheme be applied backdated to cover purchases effected before the relevant law is in place?