

VATR 41 (Govt Gazette No.55 of 26 May 2012)

Facts

X intends to acquire commercial and/or office buildings on a going concern basis and wishes to have clarifications on the VAT treatment of electricity in the real estate sector.

Electricity is normally supplied by the Central Electricity Board (CEB) to existing commercial and office buildings with one single owner, or syndicate of owners and billed according to readings from a central meter. Tenants of the commercial or building complex are thereafter separately invoiced every month in respect of their electricity consumption, by the owner or syndicate of owners, in either of the following ways:

Option 1: tenants are billed on a pro-rata basis according to their monthly electricity consumption obtained from readings of their respective secondary meters.

Option 2: tenants are billed according to their monthly electricity consumption obtained from readings of their respective secondary meters, but at the commercial rate applicable, i.e a mark-up is added on the bulk rate borne by the owner or syndicate of owners. (The bulk rate is a preferential rate which is below the commercial rate charged by the CEB).

Option 3: electricity is supplied by the CEB through a central meter but processed through a transformer and routed to the personal secondary meters of each tenant with re-invoicing made at a mark up by the owner or syndicate of owners.

Point at Issue

Whether invoices for electricity by owners or syndicate of owners to tenants under each of the above options should be charged at zero-rated amounts, or whether 15% VAT should be charged on such amounts of electricity consumption?

Ruling

Item 7 (a) of the Fifth schedule to the VAT Act provides that electricity "supplied by the Central Electricity Board and the renting out of a meter, the reconnecting of electricity supply and the carrying out of infrastructure works, by the Board is a zero-rated supply in accordance with Section 11 of the Act.

In cases where CEB supplies electricity to the landlord who subsequently routes same through his own meters to his tenants, VAT should be charged on the total amount invoiced to the tenant.

Where the tenants' meters are placed by CEB and the CEB bills are in the names of tenants but the payment is done by the landlord and claimed back from the tenants with a mark up, the landlord is authorized to charge VAT only on the mark up provided the service charge and the disbursement are clearly mentioned on the VAT invoice.