

VATR 66

Facts

S Ltd will be, upon the grant of a leasing licence by the Financial Services Commission, engaged in the provision of finance leasing services for the purchase of solar power / electric systems for use by the lessee (client) to generate electricity for its own consumption.

The client will contract with M Ltd for the installation, maintenance and operation of the solar asset. At the time of the agreement with M Ltd, the client will make an initial payment directly to M Ltd. M Ltd will thereafter transfer the right to receive monthly payments and ownership of the solar asset to S Ltd.

The client will be invoiced monthly by S Ltd for the payments for a period of 10 years and at the end of that period, ownership will be transferred to the client.

All transactions between the parties will be done on an arm's length basis and on purely commercial terms.

Points at issue

1. What are the VAT implications on signature of the agreement?
2. What are the VAT implications for S Ltd and M Ltd when M Ltd transfers the right to the monthly payments and solar system to S Ltd as security?
3. What are the VAT implications on the monthly payments made by the client?
4. Is S Ltd required to register for VAT, given it makes no taxable supplies?

Ruling

On the basis of facts provided, it is confirmed that:

1. At the time the client makes the agreement and effects the down-payment, M Ltd will have to issue a VAT invoice for the full purchase price and charge VAT thereon. The VAT invoice will have to be drawn in the name of the lessor, indicating that the purchase is on behalf of the lessee and the VAT is claimable by the latter. The client will be entitled to take credit for the input tax suffered subject to the limitations of Section 21 of the VAT Act;
2. There will be no VAT implications on the transfer of the right to the monthly payments from M Ltd to S Ltd;
3. In accordance with Item 30 of the First Schedule to the VAT Act, the charges paid by the client under a finance lease agreement is exempt from VAT;
4. S Ltd will not have to register for VAT as it will be making only exempt supplies and no other supply.

However, if the agreement is terminated before the 10 year period and the asset is sold to a third party, S Ltd will have to consider its liability for VAT registration.

(Rec. No. 2115365)