

VATR 71

Facts

Mr X is the sole shareholder in the under-mentioned companies:

- (i) Y Ltd (the “Company”);
- (ii) Z Park Ltd; and
- (iii) C Project Management Ltd.

Y Ltd (the “Company”) is a private company limited by shares and was incorporated on 15 May 2015.

Z Park Ltd is a private company limited by shares incorporated in 2010. It has a lease agreement with Business Parks of Mauritius Ltd for a plot of land of 3 acres for a fixed initial duration of 30 years with option for 2 additional periods of 30 years.

C Project Management Ltd was incorporated in 2011.

Y Ltd and Mr X propose to set up a Société Civile Immobilière d’Attribution called the Société for the development of a multi-storey building comprising of commercial spaces.

In the absence of the deed of the Société, the names of the initial associates of the Société shall be as many members (nominated partnership) as number of lots. The members of the nominated partnerships will be Y Ltd and Mr X, pending the subscription of potential buyers.

The initial share capital of the proposed Société will be approximately Rs 400 million. The proposed share capital of each of the initial associates will vary according to the number of groups of “*parts sociales*” they wish to acquire. For instance, if the building is divided into 10 groups of “*parts sociales*”, the buyer will pay Rs 40 million for one group of “*parts sociales*”.

The Société will sub-lease a third of the land from Z Park Ltd for its project.

The Société will appoint C Project Management Ltd for the management of its project and a management fee will be paid for these services.

The subscription amounts received by the Société from the buyers will contribute towards payment for invoices received from C Project Management Ltd.

Upon completion of the building, the Société will be dissolved.

Points at issue

- 1) Whether input tax suffered by the Société will be available as a credit against output tax in the course or furtherance of its business?
- 2) Whether any excess input tax attributable to the contract with contractors will be available for refund under Section 24 of the Act?
- 3) Whether a VAT registered person who buys part of the building will be able to claim input tax?

Ruling

- 1) Whether the Société is entitled to register for VAT and claim credit for input tax can only be ascertained after the VAT registration liability of the eventual buyers are established. If the Société is liable to register and does register for VAT it will be entitled to claim credit for input tax on all construction costs and such other expenses incurred in the proportion of its taxable supplies to its total supplies in accordance with the provisions of Section 21 (3) (b) of the VAT Act.

Pursuant to Section 2 and item 48 of the First Schedule to the VAT Act, the sale or transfer of an immovable property, a building or part of a building, apartment, flat or tenement for purposes other than residential purposes, by a VAT registered property developer to a VAT registered person is a taxable supply. On the other hand, if the supply is made to a non-VAT registered person, the supply is an exempt supply.

In accordance with Section 15 of the VAT Act, a person is liable to register for VAT if in the course or furtherance of his business, he makes taxable supplies and his turnover of taxable supplies is likely to exceed the VAT registration threshold.

In the light of the above provisions, the Société will be considered to be making taxable supplies to the eventual buyers who are VAT registered and the value of the taxable supplies will be the amount that the eventual VAT registered buyers will pay for part of the building they will be entitled to.

- 2) Any excess input tax attributable to the contract with contractors will not be available for refund under Section 24 of the Act for the following reasons:-
 - (i) the Société is not making exclusively zero-rated supplies; and
 - (ii) the excess input VAT is not in relation to capital goods.

However, credit for allowable input tax will be available for future set off against subsequent output tax.

- 3) If the sale is made to a VAT registered person, that person will be able to claim credit for input tax to the extent that he uses it to make taxable supplies in accordance with section 21(3) of the VAT Act.

Please note that for income tax purposes, Mr X will be liable to tax on the project in accordance with Section 10(3) (a) of the Income Tax Act.