

VATR 97

Facts

R is a company incorporated in Mauritius. It was initially engaged in the construction and sale of villas for residential purposes in the Integrated Resort Scheme (“IRS”) project. On the basis of a letter of intent obtained by R from the Board of Investment and other explanations provided, on 8 March 2007 the Mauritius Revenue Authority informed R that R was deemed to have obtained the letter of intent prior to 1 October 2006 and therefore the construction of the villas would qualify for the exemption provided under item 65 of the First Schedule to the VAT Act.

Currently R is not registered for VAT.

As some plots under the IRS project are yet to be sold, R will continue with its initial business activity, that is the sale of the available plots under the IRS project.

R is now also considering to extend its business activities as property agent. As an agent, R will deal -

- (a) directly with local clients (individuals) for the sale of villas owned by the clients;
- (b) with foreign agents who will refer foreign clients (individuals) to R for the sale of their villas; and
- (c) with local agents who will refer local or foreign clients to R for the sale of their villas.

Points at issue

- (1) Whether the letter of intent will still stand despite R is extending its business activity?
- (2) Whether the supply of sales agency service by R to the foreign agents is a zero-rated supply?
- (3) Whether the supply of sales service by R to the local clients or to local agents is a standard-rated supply and whether where it exceeds or is likely to exceed Rs 6m, R will have to apply for VAT registration ?
- (4) Whether upon VAT registration, R will have to apply reverse charge mechanism on invoices received from foreign agents for clients referral?
- (5) Whether R can apply for an alternative basis of apportionment of input VAT given the current basis leads to unfair input VAT credit entitlement?

Ruling

On the basis of the facts provided, it is ruled that -

- (1) As R is deemed to have received a letter of intent prior to 1st October 2006, it is exempted from payment of VAT on the construction of IRS villas under item 65 of the First Schedule to the VAT Act. Moreover, the sale of plots under the said scheme will be an exempt supply under item 48 of the First Schedule to the VAT Act.
- (2) The supply of sales agency service by R to foreign agents is zero-rated supply by virtue of item 6(a) of the Fifth Schedule to the VAT Act.
- (3) The supply of sales service by R to local clients or to local agents is a standard-rated supply and R has to apply for compulsory registration by virtue of section 15 (2)(i) and item 12 of the Part I of the Tenth Schedule to the VAT Act.
- (4) The reverse charge mechanism shall be applied on services received from foreign agents by R upon its registration as a VAT registered person.
- (5) For the purposes of section 21(3)(d) of the VAT Act, R can apply for an alternative basis of apportionment of input tax under Regulation 8A of the VAT Regulations 1998, where having regard to the nature of business, the apportionment of input tax in accordance with section 21(3)(b) is not fair and reasonable.