

VAT: margin scheme for sales of second-hand vehicles (2/22/19)

Section 138 of the VAT Act prescribes a special arrangement that allows a taxable dealer supplying second-hand goods to charge VAT on the difference between the selling price and the purchase price. This article explores how the State Revenue Service (SRS) makes this margin scheme for second-hand goods applicable to sales of second-hand means of transport.

The legal framework

Section 138 of the VAT Act provides that a dealer applying the margin scheme for second-hand goods should be a registered taxable person in the business of buying or importing second-hand goods for resale.

According to comments the SRS has made in a number of administrative instruments, an entity wishing to sell second-hand vehicles under the margin scheme of section 138 should be a second-hand vehicle dealer specified by section 138(2) and should meet the requirements for setting up and registering a point of sale for vehicles laid down by the Cabinet of Ministers' Regulation No. 876, *Sales of vehicles and their numbered frames*, and by section 4.1 of the Highway Traffic Act.

Section 4.1(2) of the Highway Traffic Act provides that vehicles (other than trams, trolleybuses or bicycles) and their numbered frames may be sold by a dealer that has duly set up and registered a point of sale for vehicles.

Paragraph 3 of Cabinet Regulation No. 876 provides that a dealer may sell vehicles and their numbered frames at a specially equipped place intended for such sales.

The Ministry of Finance says that paragraph 192 of Cabinet Regulation No. 17 of 3 January 2013, *Applying provisions of the VAT Act and certain requirements for paying and administering VAT*, requires the dealer to keep a record at each point of sale in order to account for the margin scheme and for the general VAT procedure.

This implies that the Ministry of Finance recognises having a point of sale as a precondition for applying the margin scheme for second-hand goods.

We believe, however, that this requirement will be fulfilled also if such records are kept at any business unit the dealer has registered with the SRS.

The VAT directive provides that a taxable dealer supplies second-hand goods, works of art, collectors' items or antiques supplied to him within the Community by listed persons, including a non-taxable person.

We believe that applying the special arrangement can only depend on the nature of business that taxable dealers carry out, not on their formal status, i.e. whether they have met any industry-specific rules.

Also, the Court of Justice of the European Union ("CJEU") says in its case-law findings about a VAT exemption, which are not directly applicable but are still relevant, that an exemption cannot be denied

solely because a person does not hold necessary permits for conducting the business in question.¹

Thus, both the VAT directive and the VAT Act clearly define the criteria a dealer must meet to apply the margin scheme for second-hand goods. The requirement for registering a point of sale for vehicles or registering second-hand vehicle sales as a business activity in order to apply the margin scheme for second-hand goods is not present in section 138 of the VAT Act, Cabinet Regulation No. 17, or the CJEU findings. We do not believe it is appropriate to lay down any preconditions for applying the margin scheme that come outside the relevant law.

¹ Ruling C-497/01 *Zita Modes Sàrl* of 27 November 2003, paragraph 54