

VAT on grant or transfer of rights to use immovable property (1/9/17)

Rules laid down by Council Implementing Regulation (EU) No. 1042/2013 explain the VAT treatment of services connected with immovable property effective from 1 January 2017. This Regulation is directly applicable in every member state, and so these VAT rules for determining the place of supply of services connected with immovable property apply uniformly across the EU.

EU requirements

Under article 47 of Council Directive 2006/112/EC (and section 25 of the Latvian VAT Act) services connected with immovable property are treated as supplied where that property is situated.

The Regulation lists services considered to be directly connected with immovable property, and article 31(a)(2)(j) relating to the grant or transfer of rights to use immovable property or its parts deserves a special mention. This article applies in particular to the grant or transfer of any rights other than lease or accommodation services, such as the grant of fishing and hunting licences, access to lounges at airports, or using toll infrastructure (e.g. bridges and tunnels).

By adopting this clause, the lawmaker intended to widen the list of services to ensure that different uses of immovable property under different contractual terms enjoy the same VAT treatment across the EU. The main purpose of adopting this clause was to prevent the same service from being taxed twice or not being taxed at all.

With respect to the grant or transfer of rights to use immovable property or its parts, it is important to note that this clause should be applied not only to the listed examples (grant of fishing and hunting licences, access to lounges at airports, bridge and tunnel tolls) but also to any similar cases involving the grant or transfer of rights to use immovable property or its parts that are not distinctly listed. To apply the appropriate VAT treatment, the taxable person should assess whether the connection between services and immovable property is sufficiently direct and whether the services will be governed by the general place-of-supply rules for services.

The scope for applying these rules is fairly wide, subject to the restriction of “sufficiently direct connection” between services and immovable property, which must be strictly observed. Although services connected with immovable property according to their economic substance are covered by article 47 of the VAT directive, any ancillary services (such as cleaning or repair services) supplied by the same provider are beyond its scope. However, if the same services are supplied as part of a complex service that includes services connected with immovable property, the taxable person should check whether that complex service qualifies as a single service for VAT purposes.

To ensure that the VAT rules are properly applied to services connected with immovable property, the taxable person should assess whether services, according to their economic substance, have a sufficiently direct connection with immovable property for applying article 47 of the VAT directive (section 25 of the VAT Act) or whether the services are governed by another clause of the directive.

We will soon be exploring some other aspects of the new rules.