GENERAL OVERVIEW OF DUTCH VAT AND RETT RULES

I GENERAL VALUE ADDED TAX (VAT) RULES

VAT is levied in the Netherlands as pursuant to the Dutch Turnover Tax Act 1968 (*Wet op de omzetbelasting 1968*) (**TTA).** As a general rule, VAT is due inter alia on the provision of services and the supply of goods by a taxable person.

A person who leases out real property is considered a taxable person for VAT purposes. In principle, the transfer and lease of Dutch real property by a taxable person are exempt from VAT. However, some exceptions apply, which are discussed in paragraph 2. If the transfer of real property is taxed with VAT, the standard VAT rate of 21% applies. If the lease of real property is taxed with VAT, the standard VAT rate of 21% is also generally applicable. However, the lease of furnished accommodation for short stay purposes is subject to a reduced VAT rate of 9%.[1]

A real property can for VAT purposes be regarded as a single object, based on the so-called 'Complex-theory'. It is also possible to treat part of a real property that is independent or that is not to be considered as an independent real property, but that can be used or operated independently in the economic sense (Unit) separately, based on the so-called '**Unit-theory**'. In practice, the Unit-theory is broadly applied. This means that in practice the VAT consequences of a transaction should be determined for each separate Unit within a single object. Consequently, the RETT aspects of a transaction should in certain circumstances also be determined on a Unit basis.

1 TRANSFER OF SHARES

1.1 General

No VAT should be due on the transfer of shares as this transfer should either be (i) out of scope for VAT, or (ii) exempt from VAT. This also applies to the transfer of shares in a company that holds real property, irrespective of the VAT status of the real property.

In a share deal the purchaser acquires shares in the target company. After acquisition, the target company – as subsidiary of the purchaser – retains indirectly all pending rights, obligations and liabilities in relation to the Dutch tax authorities (**DTA**), regarding VAT.

For VAT liabilities, the statute of limitation (the period during which the DTA can impose an (additional) assessment) is in principle five years following the calendar year in which the VAT taxable event took place or VAT refund had been granted. This means that the purchaser indirectly takes over tax liabilities for the financial years/levying periods over which the assessments or tax returns are not yet final (fixed) and/or over which the statute of limitation has not yet expired (**Relevant years**).

It is important to ascertain whether and to what extent the target company has been compliant regarding its VAT-related rights and obligations, in the past up to and including the date of transfer.

Any Recalculation / Revision period(s) (these concepts are further discussed in paragraph 4) of real property held by the target company (if any) remains in place, i.e. it does not recommence. A purchaser should therefore be aware of any applicable Recalculation / Revision period(s).

1.2 VAT fiscal unity

A company is part of a VAT fiscal unity with other companies if the combined criteria of sufficient economic, financial and organizational links between the companies are met. In principle, only taxable persons that are VAT resident in the Netherlands, or Dutch fixed establishments of foreign taxable persons, can

[1] Per 1 January 2026, the lease of furnished accommodation for short stay purposes will be VAT-taxed against the standard VAT rate of 21%. Contrary to the regular VAT rules, advance payments made before that date will already be subject to the VAT rate of 21%.

be included in a Dutch VAT fiscal unity. According to a governmental decree a holding company that has a steering and policymaking role within the group may upon request also be included in a VAT group without being a taxable person.

If a VAT fiscal unity is formally acknowledged by the DTA by means of a decision in writing, each entity within the VAT fiscal unity is jointly and severally liable for the VAT liabilities of the entire VAT fiscal unity. If the VAT fiscal unity can materially no longer exist, for instance because the shares in one of the companies are sold, the secondary liability does not end until the DTA are formally notified that the company is no longer part of the VAT fiscal unity.

Hence, if the target company is/was part of a VAT fiscal unity during the Relevant years, potential VAT liabilities could also encompass VAT liabilities from other entities included within that VAT fiscal unity.[2]

1.3 Deduction of VAT on acquisition costs

The deduction of VAT on acquisition costs (relating to the acquisition of shares) should be reviewed on a case-by-case basis. It is recommended to assess this in the early stages of a contemplated transaction. However, in general the following should be considered.

VAT leakage in connection with the acquisition of shares may be (partly) mitigated, depending on the acquisition structure. Some of the acquisition services may benefit from the VAT exemption for intermediary services with respect to share transactions (e.g. broker services). If and insofar this VAT exemption cannot be applied, the VAT on those costs could be a potential actual cost.

2 TRANSFER OF REAL PROPERTY

2.1 General

In practice, the transfer[3] of leased out real property by a taxable person is likely to qualify as a transfer of (part of) a totality of assets (algemeenheid van goederen), also referred to as a transfer of a going concern (**TOGC**), provided that the purchaser continues the operation (i.e. the leasing activities) of that real property. In case of a TOGC, the transfer of the real property is outside the scope of VAT and the purchaser assumes the seller's position in respect of that real property. The TOGC-scheme will be discussed in more detail in paragraph 2.2

If the transfer of real property by a taxable person does not qualify as a TOGC, the transfer is, in principle, exempt from VAT. There are three exceptions to this rule:

(a) the transfer of newly constructed real property as defined in the TTA, including real property that due to significant refurbishment is deemed to be newly constructed (**Newly constructed real property**), is taxed with VAT by operation of law before, on the date or within the first two years after the real property was first put into use (*eerste ingebruikneming*);

(b) the transfer of building land is taxed with VAT by operation of law; and

(c) the transfer of real property is taxed with VAT if the seller and the purchaser have opted for a VAT taxed transfer. Such option is only possible if certain conditions are met, as further set out in paragraph 2.3.

If a Dutch seller transfers real property VAT taxed by operation of law – see exceptions (a) and (b) above –, the seller is obliged to charge VAT on the purchase price for the real property to the purchaser.

On the other hand, if a foreign seller transfers Dutch real property to a Dutch purchaser and the transaction is VAT taxed by operation of law, no VAT should be charged by that seller. Instead, the Dutch purchaser should report VAT in its VAT return based on the so-called 'reverse charge mechanism', provided that the seller and purchaser both qualify as a taxable person. If both the seller and

[2] Please note that our VAT due diligence investigation is generally limited to VAT liabilities of the target.

[3] For VAT purposes, the taxable event is the supply of goods for consideration.

the purchaser are not established (and do not have any presence) in the Netherlands, then the seller should charge VAT to the purchaser. That seller is obliged to register for VAT in the Netherlands and report the VAT payable on the transfer in its VAT return.

If the transfer of real property is taxed with VAT by way of an option, the levying of VAT is shifted to the purchaser under the domestic reverse charge mechanism. This means that the seller should not charge VAT to the purchaser, instead the purchaser is obliged to report the VAT payable in its VAT return.

2.2 Transfer of a 'going concern'

If the transfer of real property qualifies as a TOGC, Section 37d TTA applies. As a result, no goods or services are deemed to be supplied or rendered. Instead, the purchaser in a TOGC takes over the VAT position of the seller in regard of the real property transferred. As a result, pending Revision periods, annual Revision VAT obligations and potential Recalculation obligations continue in the hands of the purchaser (see paragraph 4). The application of Section 37d TTA is a matter of operation of law. Pursuant to Dutch case law, the TOGC-scheme can apply to transfers of real properties that are leased out. In practice, the TOGC-scheme is generally deemed to apply in respect of transfers of leased out real properties between investors.

It is uncertain whether the transfer of a leased out real property can be considered to qualify as a TOGC by the DTA if it is transferred by a developer – who has developed the property and subsequently leased the real property out to increase its sale value – to an investor that will hold the property for leasing purposes. Please note that questions have been referred to the Dutch Supreme Court concerning the application of the TOGC scheme in such case.

Pursuant to Dutch case law, the transfer of a real property within the context of a sale-and-lease-back, in which a seller transfers real property to a purchaser and subsequently leases that property back, in principle does not qualify as a TOGC.

2.3 Option for a VAT taxed transfer

The option for a VAT taxed transfer should be made by the seller and purchaser jointly. It is only possible to opt for a VAT taxed transfer if the purchaser uses the real property for purposes for which he is entitled to deduct at least 90% (in exceptional cases 70%) of the VAT due by the purchaser (**90% criterion**).

The option for a VAT taxed transfer can be made (i) in the notarial deed of transfer of the real property or (ii) by filing a separate option request with the DTA. In case the option takes place via a notarial deed the following three conditions have to be met:

(a) the transfer takes place by means of a notarial deed pursuant to which the real property is transferred;
(b) it can be derived from the notarial deed that the seller and purchaser have opted for a transfer taxed with VAT; and
(c) the notarial deed includes the following information:
    (i) the data of the real property as recorded in the land registry (*kadaster*);
    (ii) a statement of the purchaser that the 90% criterion is met; and
    (iii) the commencement date of the purchaser's financial year (*boekjaar*).

If the option for a VAT taxed transfer is made by means of a request, such request should be received by the DTA before the transfer of the real property. The option should include the information as described above under c.

In principle, the 90% criterion is not met if the purchaser has not started to de facto use the real property for purposes for which he is entitled to deduct at least 90% (or 70% in exceptional cases) of the input VAT before the end of the financial year following the financial year of acquisition. Note that based on policy, in specific circumstances this requirement is effectively waived, subject to certain conditions.

In a decree (no. 2023-26908) the State Secretary of Finance has approved that it is also possible to opt for a VAT taxed transfer for a Unit. In that case, the

relevant Unit must be clearly described in the notarial deed or in the option request.

2.4 VAT deduction

If the transfer of real property qualifies as a TOGC, the seller of that real property can recover VAT on costs attributable to that transfer (e.g. VAT on real estate agent's and advisors' fees related to the transfer) based on its proportionate VAT deduction right ('pro rata').

In the case of a VAT taxed transfer, the seller can recover all VAT on costs attributable to that transfer.

In the case of a VAT exempt transfer, the seller cannot recover any of the VAT on costs attributable to the transfer.

A purchaser of real property can deduct VAT on costs incurred for that acquisition (e.g. VAT on advisory costs or on the purchase price, if applicable) based on the use of the real property following acquisition. This means that if the real property is fully used by the purchaser for VAT taxed purposes (e.g. a VAT taxed lease), he can fully recover VAT on costs incurred, whereas if the real property is fully used for VAT exempt purposes (e.g. a VAT exempt lease), VAT cannot be recovered at all. If the real property is used for both VAT exempt and VAT taxed purposes, a proportionate right to deduct VAT should be determined, which is in practice typically determined on the basis of sq m.[4]

3 LEASE OF REAL PROPERTY

3.1 General

In principle, the lease of real property is VAT exempt. However, several exceptions to this general rule apply, such as the lease of furnished accommodation for short stay purposes, which is VAT taxed by operation of law against the reduced VAT rate of 9%[5], and the stand-alone lease of parking spaces, which is VAT taxed against the standard VAT rate of 21%.

3.2 Option for a VAT taxed lease

Similar to the transfer of real property, it is possible to opt for a VAT taxed lease of real property – to the extent this lease is not already VAT taxed by operation of law. The option for a VAT taxed lease can be exercised for a real property in its entirety or per Unit.[6] The lessee and the lessor can jointly file a request opting for the lease to be taxed with VAT if the following requirements are met:

(a) the lessee meets the 90% criterion; and
(b) the real property or Unit concerned is not a building or part of a building that is used for residential purposes.

The lessee and the lessor can opt for a VAT taxed lease (i) by including such option in the lease agreement or (ii) by filing a separate option request[7] with the DTA. Opting in the lease agreement is subject to the following conditions:

(a) it is clearly formulated in the lease agreement that VAT will be charged on the lease;
(b) the lease agreement contains a statement of the lessee in which it declares that it will use the leased premises for activities which entitle it to a full or virtually full (i.e. at least 90%, or in some exceptional cases 70%) right to deduct input VAT on the basis of Section 15 TTA;
(c) the lease agreement includes the description of the leased premises, the data recorded in the land registry, as well as the local address. If the option is exercised in respect of a Unit, the Unit concerned should be clearly described;
(d) the lease agreement includes the commencement date of the lease;

[4] We understand that the DTA now seem to prefer a proportionate right to deduct VAT based on the yearly turnover figures (main rule) rather than on the basis of sq. m., where in the past the sq. m. approach was generally accepted and applied by the DTA.

[5] Per 1 January 2026, the lease of furnished accommodation for short stay purposes will be VAT taxed against the standard VAT rate of 21%. Contrary to the regular VAT rules, advance payments made before that date will already be subject to the VAT rate of 21%.

[6] The State Secretary of Finance has approved that it is possible to opt for VAT taxed lease of part of a real property that is independent or for a Unit (decree no. 2023-26908).

[7] The request for a VAT taxed lease also has to meet certain specific administrative requirements. These requirements differ from the administrative requirements for the request for a VAT taxed transfer of real property.

(e) the lease agreement includes the commencement date of the lessee's financial year; and
(f) the lessor includes the lease agreement in his books and records.

In principle, the option for a VAT taxed lease cannot have an effective date prior to the date on which the VAT option exercised either in the lease agreement or a separate option request. However, pursuant to a decree (no. 2023-26908) the State Secretary of Finance approves that the option for a VAT tax lease can nevertheless be effective retroactively as from the date mentioned in an option request or an (amended) lease agreement. This is conditional upon (i) the 90% criterion being met during the entire period for which retroactively the VAT option is exercised and (ii) the parties having acted in that period as if a legally correct VAT option was exercised (i.e., VAT has been charged on the rental invoices and parties accept the legal consequences arising from the option for a VAT taxed lease). If parties have not acted as if a legally correct VAT option was exercised, the option for a VAT taxed lease can be exercised with a maximum of three months retroactive effect.

Until 24 March 1999 it was only possible to opt for a VAT taxed lease by way of filing a request with the DTA. In the period as from 24 March 1999 until 2009 the possibility to opt for a VAT taxed lease in the lease agreement itself was introduced, but in addition to the aforementioned conditions under (a) up to and including (f)) the lease agreement should make reference to a specific decree from the State Secretary of Finance (no. VB99/571). Whether or not a lease is correctly subject to VAT should in principle be determined based on the rules that were in force at the time the lease agreement was concluded. Hence, the rules concerning a VAT taxed lease prior to 2009 remain relevant in respect of leases that were concluded before then.

Pursuant to a decree (no. 2023-26908), a lease agreement including an option for a VAT taxed lease that does not meet all formal conditions may, under circumstances and subject to additional conditions, (still) be treated VAT taxed.

The 90% criterion will not be met if the lessee has not started to use the real property before the end of the financial year in which the lease commenced (**Reference Period**). In that case, the request for a VAT taxed lease will be annulled and the lease is deemed VAT exempt as from its commencement. The State Secretary of Finance has approved in his decree (no. 2023-26908) that in case the actual occupation takes place at a later date, the lease can nonetheless be taxed with VAT, provided that:

(a) the lessee uses the real property for a consecutive period of at least six months;
(b) the lessee meets, in the financial year(s) in which this six month period falls, the 90% criterion;
(c) if the conditions for applying this approval are not met, the lease is considered VAT exempt as from the onset. The Lessee should then provide a declaration to the lessor and the tax inspector that it has not met the 90% criterion and should reference that he has not met the condition for this approval. The lessor agrees that the statutory of limitation for tax that concerns the lease commences the financial year in which the lessee actually takes the real property into use for making outbound supplies;
(d) the lessor agrees that if the conditions (a) and (b) are met, the (remaining term of the) Revision period (see paragraph 4 below) commences in the financial year in which the lessee actually takes the real property into use for making outbound supplies; and
(e) the lessor and lessee sign a statement attesting to their consent to conditions (c) and (d) which must be included in their administration, within four weeks of the statutory reference period being exceeded.

If one or more of these conditions is not satisfied, the lease will retroactively be exempt from VAT. This extension of the Reference Period can be applied to real property both in the event of vacancy which arises prior to the commencement of the Revision Period, as well as to vacancy which arises after the revision period has commenced.

If a lease is VAT exempt, the lessor is not allowed to deduct VAT on costs charged to him which are attributable to the VAT exempt lease. This non-deductible VAT results in an increase of the costs for the lessor. In the Netherlands, it is common practice for a lessee to compensate the non-deductible VAT on the investment and/or maintenance costs incurred by the lessor if the 90% criterion is not or can no longer be met by the lessee ('VAT compensation arrangement').

3.3 Parking space

The lease of parking space is taxed with VAT by operation of law. However, the lease of parking space may be closely related to the lease of another real property with the same lessor and lessee. For instance, where a parking space and a dwelling/office in the same complex or property are owned by a single owner who leases both to a single lessee. In this situation the lease of parking space could be deemed to be incorporated in the lease of the other real property (e.g. dwelling/office). The lease of parking space is in such cases generally considered to be subservient (*ondergeschikt*) to that other real property and, consequently, follows the VAT regime of the lease of the other real property. Hence, if the other real property is leased out exempt from VAT, the lease of parking spaces is considered VAT exempt as well. This may be different if a separate agreement is concluded with the operator of a multi-storey or underground car park.

3.4 Service costs (including utilities)

For leases in which parties opted for a VAT taxed lease, service costs (including utilities) should be treated VAT taxed.

For leases which are exempt from VAT, service costs (including utilities) could be either considered as (i) a service separate from the lease (VAT taxed) or (ii) part of the VAT exempt lease (VAT exempt). If lessees would have the contractual authority to choose the external service provider and can determine whether and how much of the service is consumed, the services costs (including utilities) are considered as a separate service from the lease (i.e. VAT taxed). The same should apply if utilities are measured based on an individual meter and the lessee is billed based on its actual usage.

4 RECALCULATION / REVISION PERIOD

4.1 Revision period

To the extent the transfer of real property was VAT taxed (either by operation of law or by option), and in case of a Newly constructed real property, the real property and the investment VAT (e.g. VAT on the purchase price or the construction costs) will be under review for a period of nine years following the year of first use (**Revision period**[8] or *herzieningstermijn*). In addition, in the case of significant refurbishment, real property may be under review for a period of nine years following the year of first use after such refurbishment, provided that the refurbishment led to a Newly constructed real property. If a refurbishment has not led to a Newly constructed real property, we are of the view that, according to Dutch VAT law, no Revision period should apply to investments procured in connection with such refurbishment ('investment goods').[9]

If the transfer of the real property was taxed with VAT, either by operation of law or by option, the purchaser can deduct the input VAT in accordance with the future use of the real property. For example, if the entire real property is to be used for a VAT taxed lease, the purchaser is entitled to deduct all input VAT relating to the purchase of the real property. If, subsequently, the real property is to be (partly) used for VAT exempt purposes within the Revision period, the original deduction of VAT on investment costs has to be adjusted by way of repayment by the purchaser to the DTA of a proportional part of the input VAT

[8] The term 'revision period' is commonly used to refer to the adjustment period for VAT on investment/purchase costs in respect of movable and immovable property during the adjustment period which commences in the year of first use of a property and continues for the four (in case of movable property) and nine (in case of immovable property) financial years following the year of first use of such property.

[9] As of 1 January 2026, the rules regarding revision will be extended. From then on, investment services to real property with an invoice amount of EUR 30,000 or more are subject to a VAT revision period of 5 years (i.e. the year of first use and the four financial years following the year of first use of such service). These investment services include the renewing, enlarging, repairing or replacing and maintaining of real property.

relating to the purchase of the real property to the DTA (**Revision VAT**). The maximum Revision VAT amounts to 10% per annum for the remainder of the Revision period.

If a real property is transferred within the Revision period, and the transfer qualifies as a TOGC, the Revision period continues in the hands of the purchaser (i.e. the Revision period does not recommence). This also means that if there is an actual Revision VAT obligation for the seller, this obligation will be taken over by the purchaser as well.

If a real property is transferred within the Revision period, and VAT was deducted on the acquisition, the seller will be confronted with an input VAT correction if this transfer is VAT exempt. This correction will amount to the aggregate Revision VAT over the remaining Revision period and will have to be settled as a lump sum in the VAT return for the period in which the transfer takes place.

After expiration of the Revision period, a VAT exempt transfer or the start of a VAT exempt lease will no longer lead to Revision VAT. However, such VAT exempt transfer or lease may still result in other non-deductible VAT on for instance operational costs.

Since it is possible to opt for a transfer or lease taxed with VAT per Unit, the Revision rules should also apply per Unit if the Unit-theory has been applied to a real property.

4.2 Recalculation obligation

Upon purchasing a real property VAT taxed (either by operation of law or by way of an option) and construction of a real property, the owner will be confronted with VAT on investment costs. If at the time these investments are made real property is not (yet) used, the VAT on such investment costs should be preliminarily determined based on the intended future use of the property. If the real property is intended to be used for VAT taxed purposes, e.g. a lease that is VAT taxed, VAT can be deducted on investment costs based on that intention. When the real property is actually put into first use following the investment, it should be assessed whether the VAT deduction based on such use is in line with the VAT deduction that has been applied based on the intended use. In addition, at the end of the financial year in which the real property has been put into use it should be assessed whether the VAT deduction applied is in line with the actual use of the real property in the year in which it has been put into use (**Recalculation**). If the VAT deduction based on the actual use of the real property is less than the VAT deduction applied based on the intended use, the VAT would have to be repaid upon the use of the real property, and/or at the end of the year in which the real property was taken into use following the investments (**Recalculation VAT obligation**).

The same applies to investments (such as refurbishments) in vacant (parts of) existing real property. Upon making such investment the owner has to determine whether the VAT on the investment can be deducted based on the intended use of the vacant (parts of the) real property for VAT taxed and/or VAT exempt activities. If, subsequently, the use of the vacant (parts of the) real property deviates from the intended use, a Recalculation of the VAT deduction has to be made based on the actual use of the real property (or relevant parts thereof) in which the investments were made.

In case a real property is transferred as a TOGC, the purchaser takes over this (potential) Recalculation VAT obligation for investments made by the seller in respect of that real property.

4.2.1 Examples Recalculation and Revision VAT

An investor acquires a Newly constructed real property (**Property X**) for a purchase price of EUR 1,000,000, to be increased with EUR 210,000 VAT. As the investor intends to use Property X for VAT taxed lease (as an office building), he recovers the entire amount of VAT.

Recalculation

If, contrary to the initial intention, the Property X is put into first use for VAT exempt purposes (e.g. if Property X is fully leased out VAT exempt), a

Recalculation VAT obligation is triggered. The investor is obliged to repay the entire amount of VAT that it had recovered of EUR 210,000.

At the end of the financial year in which Property X was put into first use an assessment of the VAT deduction right should be carried out. If in the course of that year Property X has also been used for VAT taxed purposes, the investor may reclaim a part of the Recalculation VAT it had repaid earlier to the DTA due to the VAT exempt first use of the property.

For instance, assuming a financial year that equals the calendar year, a first VAT exempt use of Property X on 1 January followed by a change of use to VAT taxed purposes per 1 July means that the VAT deduction right in that year amounts to 50%. As a result, due to the first VAT exempt use, the investor should initially repay the entire VAT amount of EUR 210,000. However, at the end of the year the investor may reclaim from the DTA a VAT amount of EUR 105,000 due to the VAT taxed use of Property X as per 1 July.

Revision period

If Property X is initially fully leased out VAT taxed the initial recovery of VAT on the entire purchase price remains in place. However, during the nine years following the financial year in which the first use of Property X occurs, a change in use of the property may cause Revision VAT to become payable. By way of example, we refer to the table below.

Year	Actual use		Revision VAT
	VAT taxed	VAT exempt	
1[10]	100%	0%	NIL
2	100%	0%	NIL
3	50%	50%	€ 10,500
4	50%	50%	€ 10,500
5	30%	70%	€ 14,700
6	30%	70%	€ 14,700
7	100%	0%	NIL
8	100%	0%	NIL
9	80%	20%	€ 4,200
10	80%	20%	€ 4,200
Total amount of Revision VAT			**€ 58,800**

Based on the above table, an amount of EUR 58,800 has to be repaid to the DTA as Revision VAT.

In case Property X would have been transferred VAT exempt by the investor immediately after the fifth year, the investor would be obliged to repay Revision VAT over the remainder of the Revision period to the DTA as a lump sum. Hence, the investor would have to pay an amount of EUR 105,000 of Revision VAT. If the transfer would be VAT taxed by way of an option, no Revision VAT would become due by the investor. Instead, a new Revision period would commence in the hands of the purchaser upon his first use of Property X following the VAT taxed transfer.

The transfer of leased out real property by an investor to a purchaser is likely to qualify as a TOGC. This means that the purchaser takes over a pending Revision period. In the above example, a transfer immediately after the fifth year would not trigger a Revision VAT obligation for the investor selling Property X, but instead the pending Revision period continues in the hands of the purchaser. Any Revision VAT for the years 6 – 10 becomes due by the purchaser, assuming it does not itself dispose of Property X during this Revision period.

5 RIGHTS IN REM

The granting, the transfer, the change, the waiver and the termination of a right in rem, for example, ground lease (erfpachtrecht), the right of superficies (opstalrecht) or easements (erfdienstbaarheid), relating to real property (Transfer of a right in rem) is deemed a transfer of real property, unless the remuneration

[10] The first year is the financial year in which the Property is put into first use.

including VAT does not exceed the fair market value of those rights. In that case, the Transfer of a right in rem qualifies as a service (comparable to lease). The fair market value of the right in rem is deemed to be at least the cost price of the real property, including VAT, as if the real property had been constructed by an independent third party at the time of the Transfer of a right in rem. For rights in rem that are subject to a periodic payment obligation such as ground rent (canon) or retribution (retributie), the remuneration is increased with the net present value of such payment obligations based on prescribed statutory rules. In case of a right in rem for an indefinite period (onbepaalde tijd) for which a periodic payment obligation such as ground rent or retribution exists, the net present value of these payment obligations is deemed to be equal to the fair market value of the underlying real property. However, the addition of the net present value of such payment obligation cannot cause the remuneration to exceed the fair market value of the real property that the right in rem concerns. Hence, the Transfer of a right in rem that has been vested for an indefinite period and that is subject to periodic payment obligations is likely deemed to be a transfer of real property.

If the granting or the transfer of a right in rem is deemed to be a transfer of real property for VAT purposes, it is possible to opt for a VAT taxed transfer under certain conditions (see paragraph 2.3), if the transfer is not VAT taxed by operation of law. In the event the granting or transfer of a right in rem is deemed a service comparable to a lease, it is possible to opt for a VAT taxed lease under certain conditions (see paragraph 3.2).

II REAL ESTATE TRANSFER TAX (RETT)

GENERAL RETT CONSEQUENCES

The acquisition of the legal title to, or the beneficial ownership of, a real property or rights in rem relating to such properties, located in the Netherlands, is subject to RETT. RETT is due at a rate of 10.4% (reduced rates may apply) of the consideration or fair market value of the real property, if higher.

The acquisition of shares in a so-called 'Real Estate Company' may also be subject to RETT.

In case of the acquisition of several properties (or multiple legal titles to one object) the RETT taxable basis should be determined per single property and/or per separate legal title. If this allocation is not properly made in for instance a portfolio transaction, this can result in RETT becoming due on a higher taxable amount than the combined value of the assets within the portfolio.

RETT is due by the purchaser. A special method applies to calculate the taxable base in case of an acquisition of rights in rem. The Dutch Legal Transaction (Taxation) Act (Wet op belastingen van rechtsverkeer) (**LTTA**) contains a number of exemptions that may apply. For example, under certain circumstances an exemption applies for Newly constructed real property (see paragraph 2) or some installations of a real property, such as an ATES[11] system (warmte-koude-opslaginstallatie), or parts thereof, may benefit from the grid exemption (netwerkvrijstelling). With respect to residential real property (Dwellings), a reduced RETT rate of 2% applies to the acquisition of a Dwelling by natural persons that will be used by the acquirer as their main residence, other than temporary. For residential real estate investors, RETT is due at a rate of 10.4%[12]. Housing cooperatives (wooncoöperaties) that acquire Dwellings from a social housing association (woningcorporatie) can apply the 2% rate as well. In addition, an exemption (startersvrijstelling) applies for the acquisition of Dwellings by natural persons in the age from 18 up to and including 34, under the conditions that the acquirer declares that he will use the Dwelling as main residence and that he did not apply the exemption before. The exemption only applies if the value of the Dwelling (including appurtenances) does not exceed EUR 525,000 (2025)[13]. A Dwelling should be understood as real property which is, at the moment of transfer, in its nature fit for residential purposes. The reduced RETT rate also applies for the acquisition of any appurtenances (aanhorigheden) to the Dwelling that are acquired together (on the same day)

[11] Aquifer thermal energy storage.
[12] As from 1 January 2026, a RETT rate of 8% will apply for the acquisition of residential real estate by investors.
[13] As per 1 January 2026, this amount will be increased to EUR 555,000.

with that Dwelling (whether or not from the same seller). A related construction, such as a parking space, garage box, storage or a bicycle shed, qualifies as an appurtenance to Dwellings if such construction (i) belongs with the Dwelling, (ii) is used by (the occupant of) the Dwelling and (iii) is subservient to the Dwelling.

The acquisition of a real property of which at least 90% of the floor area is in its nature intended for residential use, qualifies for the application of the reduced RETT rate in its entirety.

1 ACQUISITION OF SHARES

1.1 General

10.4% RETT may be due in case of an acquisition of shares in a Real Estate Company as defined in Section 4 of the LTTA. In this respect, RETT is in principle due if the purchaser (acquiring party) has, whether or not together with its '*affiliated entities*' or '*affiliated natural persons*', a '*substantial interest*' (definitions are further explained below).

For RETT liabilities, the statute of limitation is in principle five years – in case of an acquisition of full or legal ownership of real property – and twelve years – in case of an acquisition of beneficial ownership of real property – following the relevant fiscal year in which the RETT taxable event (i.e. acquisition of real property) took place. This means that the purchaser of a company indirectly takes over RETT liabilities of the acquired company for the financial years/levying periods over which the assessments or tax returns are not yet final (fixed) and/or over which the statute of limitation (the term for the imposition of additional assessment) has not yet expired.

It is important to ascertain whether and to what extent the acquired company has been compliant regarding its RETT-related rights and obligations, in the past up to and including the date of transfer.

1.2 Real Estate Company

A Real Estate Company can be defined as a legal entity whose assets, at the time of acquisition or at any time in the preceding year, largely (more than 50%) consist or consisted of real property and simultaneously at least 30% of the assets consist or consisted of real property located in the Netherlands, provided that, at that time, the real property taken as a whole is or was fully or predominantly conducive to the acquisition, disposal or operation of that real property.

1.3 Substantial interest

As regards the acquisition of shares in a Real Estate Company by a legal entity, RETT is levied only if the acquiring party, including the shares that already belong to it and shares yet to be acquired by virtue of the same or a related agreement, whether or not together with an affiliated entity or an affiliated natural person, has an interest in the legal entity of at least one-third.

1.4 Affiliated entities

Pursuant to the LTTA, the following entities are considered entities affiliated with the acquiring party:

(a) An entity in which the acquiring party has an interest of at least one-third;
(b) An entity that has an interest of at least one-third in the acquiring party;
(c) An entity in which a third party, his spouse or his relatives by blood or marriage in the direct line and in the second degree of the collateral line, whether or not together, has or have an interest of at least one-third, whereas this third party, whether or not together with his spouse or his relatives by blood or marriage in the direct line and in the second degree of the collateral line, also has an interest in the acquiring party of at least one-third.

1.5 Affiliated persons

The following persons are considered natural persons affiliated with the acquiring party:

(a) A natural person who, whether or not together with his spouse and his relatives by blood or marriage in the direct line and in the second degree of the collateral line, has an interest of at least one-third in the acquiring party or in an entity affiliated with the acquiring party, as well as this person's spouse and relatives by blood or marriage in the direct line and in the second degree of the collateral line, are considered natural persons affiliated with the acquiring party.

2 CONCURRENCE OF VAT AND RETT

2.1 Asset deal

It is possible that both VAT and RETT are due on the same transaction. To avoid double taxation, the acquisition of real property is exempt from RETT pursuant to Section 15(1)(a), LTTA (**Concurrence exemption**) in the following two situations:

(a) The transfer is VAT taxed by operation of law (i.e. not by way of opting for a taxed transfer) or, in case of a right in rem, is a deemed service that is VAT taxed, *and* the real property has not been used as a business asset (*bedrijfsmiddel*)[14] at the time of the acquisition; or

(b) The transfer is VAT taxed by operation of law (i.e. not by way of opting for a taxed transfer) or, in case of a right in rem, is a deemed service that is VAT taxed, *and* the real property has been used as a business asset at the time of acquisition *and* the purchaser is not entitled to a full or partial deduction of the input VAT incurred, i.e. the purchaser cannot recover the VAT in full or in part.

In principle, the Concurrence exemption is not applicable with respect to the acquisition of a Newly constructed real property (or part thereof) in so far as the real property has been used as a business asset at the time of acquisition and the purchaser is entitled to a full or partial deduction of the input VAT incurred. However, the Concurrence exemption can nevertheless be applied if the following conditions are met:

(a) It concerns real property that is leased out or used within the business of the seller and the acquisition takes place within six months after the date of the first use by the seller or, if earlier, the commencement date of the lease;

(b) A notarial deed is drafted for this transfer and this notarial deed is executed within the period set out under (a); and

(c) The transfer is taxed with VAT by operation of law or, in case of a right in rem, is a deemed service that is VAT taxed [15].

If, for VAT purposes, the real property concerns separate Units and the VAT rules are applied per Unit (i.e. the Unit-theory has been applied), the RETT rules will also be applied per separate Unit.

2.2 Share deal

The transfer of shares in a real estate company is in any case exempt from VAT and hence, there would be no concurrence of VAT and RETT. However, based on a decree from the Dutch State Secretary of Finance (no. 2024.35268), the Concurrence exemption can nevertheless be applied in case of share deals if the underlying real property:

(a) has not been used as a business asset (bedrijfsmiddel)[16] at the time of the acquisition (including building land); or

(a) has been used as a business asset at the time of acquisition, but:

  (i) It concerns real property that is leased out or used within the business of the seller *and* the acquisition takes place within six months after the date of the first use by the seller or, if earlier, the commencement date of the lease;

[14] The leasing of real property is considered to be the use as a business asset.

[15] If no VAT is levied because a transfer of real property takes place within a fiscal unity for VAT purposes or because the transfer qualifies as a TOGC, the Concurrence exemption should in principle also apply under the same conditions. The State Secretary of Finance has approved this in a decree (no. 2017-51500, as amended from time to time).

[16] The leasing of real property is considered to be the use as a business asset.

(ii) A notarial deed is drafted for this transfer and this notarial deed is executed within the period set out under (i); and

(iii) The direct transfer in an asset deal would be taxed with VAT by operation of law.[17]

However, effective 1 January 2025, also if the preceding situation occurs, the Concurrence Exemption cannot be applied, and RETT is due at a special reduced rate of 4% instead, if and insofar the following conditions are met:

(a) In case of non-application of this exemption, RETT is indirectly imposed on the value of one or more real properties within the meaning of TTA or rights to which they are subject; and

(b) those real properties or rights to which they are subject are used for at least two years after their acquisition for activities for which less than a full or virtually full (i.e., 90%) right to deduct input VAT exists.

3 SUCCESSIVE ACQUISITIONS

Section 13(1) LTTA includes a facility for successive acquisitions of the same real property within a period of six months to avoid double taxation. The taxable RETT base in respect of the acquisition of real property is reduced with the taxable base of previous acquisitions (i.e. RETT or VAT, which was not recoverable, must have been due on the earlier acquisition(s)) that took place in the six months preceding the date of the acquisition at hand. In case the initial acquisition is subject to a RETT rate of 2% or 4% and the subsequent acquisition is subject to a RETT rate of 10.4%, a tax reduction will be given instead of a taxable RETT base reduction.

Example[18]

A acquires an office building on 1 January for a purchase price of EUR 25,000,000 ('acquisition 1'). The RETT due amounts to 10.4% of the purchase price, hence EUR 2,600,000.

On 1 March, B acquires the office building for a purchase price of EUR 24,000,000 ('acquisition 2'). Normally the RETT due by B would amount to 10.4% of the purchase price, hence EUR 2,496,000. However, since RETT was due in respect of acquisition 1 the taxable base for acquisition 2 can be reduced with the taxable base of acquisition 1. The application of the RETT facility for successive acquisitions can, however, not result in a refund of RETT (i.e. the taxable base cannot become negative). This means that the taxable base for acquisition 2 is NIL and no RETT is due by B.

C acquires the office building on 1 July for a purchase price of EUR 30,000,000 ('acquisition 3'). The taxable base for acquisition 3 can be reduced with the taxable base for acquisition 1 since all the acquisitions take place within a period of six months. Acquisition 2 does not impact the taxable base for acquisition 3 as no RETT was due in respect of that acquisition. As a result, the RETT due by C is calculated as:
10.4% x (EUR 30,000,000 -/- EUR 25,000,000) = EUR 520,000

D acquires the office building on 2 July for a purchase price of EUR 30,000,000 ('acquisition 4'). The taxable base in respect of acquisition 4 can only be reduced with the taxable base for acquisition 3 since acquisition 1 took place more than six months prior to acquisition 4 and no RETT was due in respect of acquisition 2. As a result, the RETT due by D is calculated as:
10.4% x (EUR 30,000,000 -/- EUR 5,000,000) = EUR 2,600,000

Legally the RETT facility for successive acquisitions is applied by the acquirer of real property. However, parties can commercially agree who will be the beneficiary of the RETT benefit. In practice it is common to agree that the purchaser should compensate the seller for the RETT benefit due to the application of the RETT facility for successive acquisitions. If that is the case, such compensation becomes part of the RETT taxable base. Parties generally agree that the purchaser shall in any case not pay more in terms of

[17] In case of a right of rem where it is doubtful whether it is a supply for VAT purposes, there is a specific approval for the application of Concurrence exemption. This approval requires that such right of rem concerned a (intended) VAT taxed lease in case of an asset deal, which can be substantiated.

[18] Assume that all transactions take place in the same year.

compensation and RETT than he would have paid if the RETT facility for successive acquisitions had not applied.

By way of illustration: A acquired a real property for a purchase price of EUR 25,000,000 and paid EUR 2,600,000 RETT. Within six months, A sells and transfers the real property to B for a purchase price of EUR 30,000,000. As B can apply the RETT facility and reduce the taxable base of its acquisition of the property, B is only required to pay RETT in the amount of EUR 520,000[19]. Hence, B saves EUR 2,600,000 of RETT. If A and B commercially agree that B pays this RETT saving to A, B would have to pay an additional amount of EUR 2,600,000 to A. The primary RETT taxable base would then be EUR 32,600,000. As a result, the RETT due by B would be calculated as:
10.4% x (EUR 32,600,000 -/- EUR 25,000,000) = EUR 790,400

In total, B would have paid an amount of EUR 3,390,400 that is composed of the compensation and RETT[20]. If the RETT facility had not applied, B would have had to pay a RETT amount of EUR 3,120,000. To avoid this effect, parties generally agree that the compensation that B is required to pay to A includes the RETT due on such compensation. That means that B is required to pay to A:
EUR 2,600,000 / 110.4% = EUR 2,355,072 (rounded)

The RETT due is then calculated as:
10.4% x (EUR 32,355,072 -/- EUR 25,000,000) = EUR 764,927

In that case, B would pay a total amount of EUR 3,120,000[21] in terms of compensation (to the seller) and RETT.

4 RIGHTS IN REM

The acquisition, the granting, the transfer, the amendment (including an extension of the term), the waiver and the termination of rights in rem relating to real property such as ground lease, right of superficies or easements, are in principle subject to RETT at a rate of 10.4%. The taxable base for RETT purposes for the transfer of such rights in rem is calculated at (i) the purchase price (or the market value if higher) of the right in rem, plus (ii) the net present value of future ground lease payments, charges or lease payments, minus the value of ground lease payments, charges or lease payments which have been paid upfront. The net present value of future payments should be calculated in accordance with a statutory formula whereby the outcome may depend on several variables. The taxable base is capped at the market value of the real property concerned if it were in freehold (it is market practice to have a valuation report drawn up). However, it is our understanding that the DTA are of the view that if the agreed property value on which the purchase price is based exceeds the market value of the real property if it were held in freehold, RETT should be calculated as 10.4% on the agreed property value of the right in rem.

Although it is not entirely clear whether the same calculation method applies to the acquisition of shares in a Real Estate Company, we assume for now that the same method applies.

[19] 10.4% x (EUR 30,000,000 -/- EUR 25,000,000) = EUR 520,000.
[20] EUR 2,600,000 + EUR 790,500 = EUR 3,390,400.
[21] EUR 2,355,072 + EUR 764,927 = EUR 3,120,000.