

VAT & real estate:

what changes in 2023?

In this context of strong inflation, VAT constitutes a lever of action that governments can activate to maintain buying power amongst the population. It is also a strong element of any tax policies – including those aimed at reducing the use of fossil energy. It comes therefore as no surprise that the Luxembourg Government recently announced two significant VAT measures: a general reduction in VAT rates, and a special reduction of the VAT rate applicable to solar panels.

Players in the Luxembourg real estate sector should pay specific attention to these new rules, as their practical implementation can in many instances raise questions.

1. Temporary reduction in VAT rates

What does this mean?

In order to fight the effects of inflation, the Luxembourg Government has announced a temporary reduction of VAT rates in Luxembourg as from 1st January 2023. The reduction is planned to be maintained for a full year.

In effect, most current rates will be reduced by 1%. However, the super-reduced rate of 3%, sometimes applicable to residential real estate, will remain unchanged.

	Standard rates	Temporary reduced rates	Most relevant products
Standard rate	17%	16%	All transactions that do not benefit from a reduced rate
Intermediate rate	14%	13%	Custodian services, management of credits and credit guarantees, some alcohol products
Reduced rate	8%	7%	Electricity, gas

Why is this relevant to the real estate sector?

VAT taxable leases

Where the parties have opted for the application of VAT on their lease agreement, the applicable VAT rate will have to be reduced from 17% to 16%. While this seems to be a fairly easy change to adopt, the practical implementation may prove more complicated than expected. Under Luxembourg VAT Law, business-to-business transactions generally generate an obligation to raise an invoice. In such cases, VAT is due at the earliest of (i) the time of issuance of the invoice or (ii) the fifteenth day of the month following that during which the supply took place.

However, the Grand-Ducal Regulation dated 7 March 1980 allows landlord not to raise invoices each month under specific conditions. Instead, the landlord can simply provide the tenant with a one-off written information, to be updated in case of modification of the rent. Yet, this exception simply constitutes an attenuation of the obligation to raise an invoice, as opposed to a derogation, as the written information is deemed to replace the invoice.

Ultimately, the applicable VAT rate will therefore depend on whether the landlord issues, or not, a monthly invoice. In such a case, the VAT rate applicable should be that of the earliest of (i) the date of the invoice or (ii) the fifteenth of the following month. Where, on the contrary, the landlord does not raise an invoice, then VAT should be due at the rate applicable on the fifteenth of the following month. Based on the above, the rent for December 2022 may, under certain circumstances, be subject to a 16% VAT rate, while the rate for December 2023 may, in turn, attract a 17% VAT rate.

VAT exempt leases

It is very common for lease agreements in Luxembourg to provide that, where VAT cannot be opted for (generally because the tenant does not fulfil the relevant conditions), the agreed rent is automatically increased by an amount equal to the VAT rate, or 17%.

With the reduction of applicable VAT rates in 2023, the rent effectively due may have to be adapted. This is particularly true where the VAT clause provides that the agreed rent is automatically increased by an “amount equal to the applicable VAT rate”. In this specific case, the increase no longer amounts to 17%, but should instead be capped at 16%.

As always, a careful review of the relevant contract is warranted to ensure that these VAT changes are implemented in a way that also follows the documented agreement of the parties.

Charges

Where the charges are re-invoiced by the landlord to the tenant as a separate VAT taxable supply, specific attention will also have to be given to the applicable VAT rate, as both the supply of electricity and of gas will benefit from a rate of 7%. Here also, timing of the invoice may have a significant influence on the applicable VAT rate.

2. Reduced rate on solar panel

Finally, the Luxembourg Government has also announced – in the framework of discussing the 2023 budget law – that the supply and installation of solar panels on a range of building should benefit from the super-reduced rate of 3%. It is however unclear at this stage if the intention is to aim at solar panels only, or if the foreseen changes also include photovoltaic panels. While the objective of the Luxembourg Government – reduce the use of fossil fuels – could provide arguments in the direction of the inclusion of photovoltaic panels, the text of the suggested amendment remains clear in that it only relates to “solar panels”. The strict interpretation of reduced rates may hence limit the scope of this new policy.

3. How can we help?

VAT proves to be a complex tax to comply with in practice. Our Real Estate Team stands ready to assist you with any question you may have as a result of these changes.

Contact Information

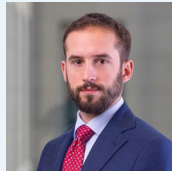
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