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Newsletter

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VAT on Residential Supply

Ernst & Young wishes to bring to your attention the current application by FRCS of the provisions on VAT on residential supply effective 1st August 2020.

- (i) If you are in the business of solely providing residential homes for residential long-term hire, then that business activity is exempt under Schedule 1 of the VAT Act. The following applies:
 - (a) You are not liable to register for VAT nor can you voluntarily register;
 - (b) You cannot charge VAT to your tenants and you cannot claim VAT on any related Vatable expenses you incur; and
 - (c) If you sold any of the homes, because you are not registered for VAT, you cannot charge VAT on the sale.

- (ii) If you were registered prior to the removal of the above exemption because your revenue was above the \$100,000 threshold, effective 1st August 2020:
 - (a) you will be deemed as deregistered under Section 23 of the VAT Act;
 - (b) You cannot charge VAT, nor can you claim VAT; and
 - (c) If you sold any of the homes, because you are deemed deregistered, you cannot charge VAT on the sale.

The above will change if the nature of your business changes to selling of residential homes. The CEO of FRCS can make a determination of the date of VAT registration. However, VAT refunds are limited to 3 years.



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(iii) In addition, if you continue to be registered for VAT (due to another taxable activity) and you are disposing of a residential property then paragraph 7 of Schedule 2 of the VAT Act 1991 will apply. That is:

- ▶ FRCS will look at whether input VAT claims were made by the registered person in acquiring the residential home. This would have been done during the time period in which the supply of the dwelling as a means of hire was subject to VAT and the usual operation of the VAT rules.
- ▶ If input VAT was claimed, then the disposal is subject to VAT. Such disposals cannot qualify for zero rating as the purchaser will not use the dwelling to make taxable supplies but exempt supplies.

(iv) Business of Selling Residential Homes

A taxpayer who only buys and sells residential homes may or may not be required to register depending on the nature of activity. If the properties are bought, used to derive rental income in a residential like nature (non-commercial) and then sold, then the liability to register may not apply; all supplies are exempt under paragraph 2 and paragraph 7.

On the other hand, buying and selling properties in quick succession without any element of residential rental, may require registration. Again, the determination would be done on a case-by-case basis.

Our advice is based on the current taxation legislation and our understanding of FRCS's current interpretation of the law. We note however that, it is our experience that the FRCS can be inconsistent in their interpretation of the tax law and we cannot guarantee that the advice will not be challenged. Nor is it possible to guarantee the outcome of such a challenge if it occurs. Should you have any contact from the FRCS in respect of this advice, we recommend that you contact us for advice on how to proceed.

It is also important that you ask us to review any advice already given if a transaction is delayed, or is to be repeated, or if an apparently similar transaction is to be undertaken. Our original advice may no longer be applicable or appropriate in such circumstances.



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