



Highlights from the Real Estate Guide

Introduction

The National Bureau for Revenue ('NBR') has recently issued its *Guide on Real Estate*, clarifying the tax treatment on a wide range of transactions undertaken by the real estate and construction industry. This Alert captures some of the major developments and clarifications which have been addressed in the Guide.

Definitions

Real estate includes –

- Any area of land over which rights, interests or services can be created. This includes land which has partially been developed.
- Any building, structure or engineering work permanently attached to the land.
- Any fixture or equipment which makes up a permanent part of the land or is permanently attached to a building, a structure or engineering works.

Construction – means building something such as a house, office, factory, warehouse, road, bridge, etc. Construction may also involve demolition, refurbishment/reconstruction of existing buildings or structures, and site clearance activities. Construction involves providing a building service but may also involve providing goods as part of such a service.

Building – a residential, commercial or industrial building. Generally, a building will be an immovable structure that has walls and a roof. Structures such as bridges, elevated roads and flyovers will not be regarded as buildings for the purposes of the zero-rate.



New buildings – a building will be regarded as “new” if it is built from scratch on a green-field or brown-field site. If an existing structure is demolished prior to construction, this will not impact the building being regarded as new.

Construction works – are those works necessary to build a building from start to finish so that the building is habitable and fit for purpose. These works include:

- Excavation works for basements and underground car parks
- Digging and pouring foundations (including piling works)
- Pouring concrete for supporting columns and for floors
- Brickwork, building the roof of the building
- Insulation works, waterproofing
- The installation of windows

It is important to note that demolishing a structure/building is not treated as “construction work” even if a new building is to be built in that place OR is part of the construction contract.

Labour accommodation – a facility where labourers are housed by their employers.

Real estate related services – those services which are directly connected with real estate. These include, but are not limited to, the following:

- Services by real estate experts or agents
- Services which involve the preparation, coordination and performance of construction, demolition, maintenance, conversion, or similar work
- Accommodation services
- Services by auctioneers, architects, interior designers, surveyors, engineers and others involving matters relating to real estate

Overview of VAT treatment of supplies related to the sale and lease of real estate

Real estate supply	Exempt	Zero-rate (0%)	Standard Rate (5%)
Sale or lease of residential or commercial real estate	✓		
Sale or lease of land, including partially developed land	✓		
Car parking for one month or more, provision of serviced office space on an exclusive basis	✓		
Supply of hotel accommodation, parking for less than one month, provision of serviced office space on a non-exclusive basis, rental of a functional room, hall or facility	✓		
Services which are separately charged from a supply of real estate			✓
Serviced apartments			✓
Storage services			✓
Transfer of property as part of a going concern	N.A. – Out of Scope		



Overview of VAT treatment of supplies related to construction services

Construction supply	Exempt	Zero-rate (0%)	Standard Rate (5%)
Construction of a new building		✓	
Construction of extension to an existing building (where the extension adds an additional room or functional space to the building)		✓	
Site clearance works prior to the construction of a new building		✓	
Services provided by engineers and surveyors and similar services of a supervisory nature that relate to the construction of a new building		✓	
Civil engineering works relating to a new building		✓	
Restoration, refurbishment and/or reconstruction works on an existing building			✓
Demolition services (even when on land on which a new building will be constructed)			✓
Architects' and interior design fees			✓
Landscaping			✓
Construction of swimming pools, saunas and steam rooms			✓

Key clarifications on sale/rental of real estate

Car parking

The Guide clarifies that car parking that is provided for a period of more than one month shall be exempt and treated as supply of real estate. This benefit shall be applicable irrespective of whether a designated car parking is provided on an exclusive basis.

Serviced office space

A serviced office space shall be exempt under VAT if the customer is given an exclusive right to use a designated space or part of the office. However, scenarios whereby a customer has



no such right (*i.e.* a situation in which a customer is only given the right to use a desk), the supply will be taxable @5%.

Where a customer has exclusive lease of a serviced office space that receives additional services such as telephone, internet, printers, etc., the renting of office space shall continue to remain exempt, however the additional services shall be liable to a VAT charge @5%. Accordingly, the office space provider will have to apportion considerations relating to the additional services on a fair market-value basis and issue tax invoices for the same (if a single price has been quoted for both lease and additional services).

Permission to affix equipment or signage

Permission to affix equipment or signage such as telecommunication towers, advertising boards, etc., to land or buildings shall be liable to VAT @5%. These shall be treated as a grant over the right to use such areas of the real estate.

Serviced accommodation

As per the Guide, serviced accommodation involves additional services such as cleaning, internet/telecom, laundry, etc., as part of the lease agreement. The general rule under VAT is that supply of serviced accommodation shall be taxable @5%. However, if the lease agreement of a place of serviced accommodation is for a period of 12 months or more, then it shall be exempt under VAT.

The additional service being offered is examination on a case-by-case basis to ascertain whether the accommodation qualifies as serviced accommodation. Following are examples of services which will *not* make a place of accommodation fall under the definition of 'serviced accommodation' –

- Cleaning of communal areas
- Security
- Maintenance of the common areas in a building

Labour accommodation

Labour accommodation provided for a consideration will be treated as an exempt supply of real estate if the following criteria are met:

- a. The building is fixed to the ground and cannot be moved without being damaged
- b. The building is the labourer's principal place of residence in Bahrain
- c. The labourer is provided with a designed space that is exclusively for his own use (e.g., his own room or bed that he will sleep in each night) and this area is not changed on a frequent basis

If additional charges are charged separately (in addition to the accommodation) then the charge for such additional services shall be taxable @5%.

The NBR has indicated that the costs incurred for providing accommodation to employees to allow them to better perform their duties/work shall be regarded as business expenses and



not deemed supplies. Accordingly, input VAT can be recoverable on the same. These examples include the following:

- Accommodation provided to employees who work on an oil rig or vessel for the duration of the working period or shift.
- Accommodation located in a remote area, which is provided for the duration of a specific project, is adjacent to or at the place where the employees will carry out their duties, and where it would not be feasible to transport the employees from an inhabited area to the remote place of work on a daily basis.
- Temporary accommodation for a short period (e.g., 15 days) provided immediately prior to an employee being deployed to a remote or offshore location or immediately after such deployment, to enable the employee to be efficiently transported to or from his place of work.

Storage and warehousing

The Guide clarifies that if the storage or warehousing facilities provide a designated space on an exclusive basis, then provision of such services shall be considered as supply of real estate, and accordingly be exempt under VAT.

If the storage/warehousing services leave where the goods are to be stored to the discretion of the service provider, then such services shall be taxable @5% under VAT.

Key clarifications on construction services

Buildings

The Guide has clarified that structures other than residential buildings shall qualify as 'buildings' for the purposes of real estate. Following are certain non-exhaustive examples that have been provided in the Guide:

- A dwelling (such as a villa, house, apartment)
- Offices
- Factories
- Workshops
- Retail stores
- Multi-storey car parks
- Power stations
- Oil refineries
- Liquefied natural gas stations
- Oil fields

New buildings

The following points are to be noted:



- Existing buildings being renovated or refurbished shall not be considered as ‘new buildings’, even if the renovation or refurbishment is substantial.
- If a building is demolished, but a part of it is retained to be utilised as part of the newly constructed building, then the retained part shall also be considered as a new building.
- If a new structure is created adjacent to an existing building, then it shall be considered as a new building.
- Boundary walls being constructed around a new building shall be considered as part of the new building.
- If an extension to an existing building acts as a functional space, then it shall be considered as a new building.
- If a room or existing part of a building is demolished and replaced with a new structure which does not add any additional capacity in terms of space or function, it shall not be regarded as a new building.
- If during the course of repairs or upgrade of an existing building an extension is added, then only the extension shall be regarded as a new building.

Engineering, Procurement and Construction (EPC) contracts

The Guide clarifies that EPC contracts and Lump Sum Turnkey contracts shall be regarded as contracts for the provision of construction services. Where the contract involves several components such as supply of goods along with services such as installation and inspection, the contract will be seen as one single contract for the provision of a construction service.

Civil engineering

Civil engineering works that are essential to the completion of a new building shall be considered as construction works eligible for zero-rating. Following are certain examples:

- Installation of sewerage systems on the land on which the new building is to be constructed.
- Installation of piping (e.g., for water or sewerage) on the land on which the new building is to be constructed.
- Laying of roads and paths necessary for the proper use and enjoyment of the building and car parking.
- Roads that are needed to access the building from a public road or an adjoining site and to access parking.
- Services to connect a new building to telecommunications services.
- Services to install solar energy panels and related equipment designed to produce electricity and hot water for the new building.
- **Note that** laying of paths for decorative or recreational purposes (e.g., constructed as part of gardens or landscaping) will *not* qualify for zero-rating.

Sub-contractor services

The guide has clarified that services provided by a sub-contractor to a main contractor in relation to construction services are also zero rated – subject to certain conditions.



Services not qualifying for zero-rating

The following services, even if being provided as part of the construction services, shall not be eligible for zero-rating:

- The installation or assembly of furniture that is not affixed to the building
- Landscaping
- The construction of swimming pools (including any goods provided in relation to this construction), whether on the land adjacent to the building or incorporated into the building (e.g., on the roof or in a basement), even if it is part of the same construction contract
- The installation of decorative lighting, carpets or movable partitions
- The installation or hanging of artwork

Retention payments

The Guide addresses the construction industry practice of 'snagging', wherein inspection of the building is carried out to ascertain any defects or quality issues related to the construction. The retention amount withheld by the customer pending rectification of the defects shall be considered as part of the snagging process.

If the builder/contractor rectifies the defects at his own cost and does not receive any additional consideration for the work, then it shall not be regarded a further supply of construction services. Accordingly, no VAT will have to be paid on the same.

Comments

The *Real Estate Guide* issued by the NBR provides several clarifications that are key to the real estate and construction industry, thereby assisting them in ascertaining the correct VAT treatment on various transactions. The NBR has taken into consideration industry practices and has addressed industry issues, which shall go a long way in providing clarity and certainty for ensuring VAT compliance.



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